

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

REDACTED

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	File No. 1:16-cr-179
)	
Lonnie Dale Spotted Bear,)	
)	
Defendant.)	

TRANSCRIPT OF JURY TRIAL
VOLUME II
Pages 205-434

Taken at
United States Courthouse
Bismarck, North Dakota
September 13 and 14, 2017

BEFORE THE HONORABLE DANIEL L. HOVLAND
-- UNITED STATES DISTRICT COURT JUDGE --

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1 (The above-entitled matter came before the Court, The
2 Honorable Daniel L. Hovland, United States District Court
3 Judge, presiding, commencing at 8:54 a.m., Wednesday, September
4 13, 2017, in the United States Courthouse, Bismarck, North
5 Dakota. The following proceedings were had and made of record
6 in open court with counsel and the defendant present, but out
7 of the presence of the jury.)

8 - - - - -

08:54

9 THE COURT: We'll open the record in this case,
10 *United States of America versus Lonnie Dale Spotted Bear*. All
11 counsel are present, along with the defendant. We're outside
12 the presence of the jury. I guess, Mr. O'Konek, you wanted to
13 visit?

08:55

14 MR. O'KONEK: Yes, briefly, Your Honor. Myself and
15 Special Agent Bennett were going in the elevator today, and one
16 of the jurors -- I believe it was Juror Number 10 -- was in
17 there, and we -- I just had said hello, not realizing who he
18 was until he signed in over here. I wanted to just report
19 incidental contact. We didn't talk about anything regarding
20 the case.

08:55

21 THE COURT: It happens.

22 MR. BOLINSKE: One juror said hello to me, and I
23 nodded and smiled, so --

24 THE COURT: Okay.

08:55

25 MR. O'KONEK: And then just another housekeeping

1 matter, we'll be requesting to play the forensic interviews of
2 at least two of the children. Those interviews together would
3 be about 55 minutes. There's one more interview that we may
4 play, but that will depend on how the third child testifies.

08:55

5 THE COURT: All right.

6 MR. O'KONEK: Just -- and I don't think that adds too
7 much. I think we'll still be done today with the evidence, but
8 just wanted to give the Court a heads-up.

08:55

9 THE COURT: And that's the interviews in their
10 entirety?

11 MR. O'KONEK: We've redacted them down to just the
12 relevant portions to also get rid of any additional uncharged
13 misconduct or any hearsay statements, so they're about -- each
14 of the two that we play is about 30 -- 20 to 30 minutes apiece
15 or an hour.

08:56

16 THE COURT: And under the rule of completeness,
17 Mr. Bolinske, was there anything else that you wanted to --

18 MR. BOLINSKE: Well, I guess --

19 THE COURT: -- show from the videos, or --

08:56

20 MR. BOLINSKE: I guess I'll have to see because I got
21 the list of the redactions. I haven't seen the videos with the
22 redactions, but I have the list of what was redacted, and it
23 wasn't like a bunch. It was just like a few statements, right?

08:56

24 MR. O'KONEK: It was -- some of what we had redacted
25 was, we didn't -- we redacted some of the statements between --

1 what they were saying about what the other children would have
2 said because we didn't know how it was going to play out.
3 There's also allegations from the children saying that one of
4 the other -- another child may have been molested. We want to
5 take that out because that's uncharged misconduct. Those --
6 there's talk in, I think, one of them about a potential plea
7 agreement. Under 410 we can't talk about that, so I -- we
8 tried to make it so that it wasn't anything that would --

9 THE COURT: All right.

10 MR. O'KONEK: -- influence the jury in opposition to
11 the defendant.

12 THE COURT: But you expect that you'll be done
13 approximately what part of the day?

14 MR. O'KONEK: I would say we'd probably be done
15 shortly after lunch. I would say maybe by 2 o'clock.

16 THE COURT: Okay. And do you intend to call
17 witnesses then today, Mr. Bolinske?

18 MR. BOLINSKE: I do, Your Honor, yes.

19 THE COURT: And how many do you have, approximately?

20 MR. BOLINSKE: Three to four.

21 THE COURT: Okay. They're all relatively short?

22 MR. BOLINSKE: Should be, yes. Yep.

23 THE COURT: All right. If there's nothing else,
24 we'll bring the jury in.

25 MR. O'KONEK: If we can get one second just to make

1 sure to recall -- I think we were in the middle of a witness.

2 THE COURT: Mr. Hallam was on there.

3 (The jury enters the courtroom.)

08:59 4 THE COURT: Good morning, members of the jury. We'll
5 go back on the record in this case, *United States versus Lonnie*
6 *Dale Spotted Bear*. When we left yesterday, Mr. Hallam was --
7 had just finished responding to questions from Mr. O'Konek on
8 behalf of the government. Mr. Bolinske -- you had completed
9 your questioning?

09:00 10 MR. O'KONEK: That's correct, Your Honor.

11 THE COURT: All right. Mr. Bolinske, you may inquire
12 on cross-examination.

13 MR. BOLINSKE: Okay. Very briefly.

14 CROSS-EXAMINATION

09:00 15 BY MR. BOLINSKE:

16 Q. You agree with me, wouldn't you, that these allegations
17 are very serious against Mr. Spotted Bear?

18 A. Yes.

19 Q. And because they're so serious and the stakes are so high,
09:00 20 you'd obviously want to get to the truth, wouldn't you?

21 A. I wish I would be allowed to make the statements of the
22 truth that couldn't be taken out of context. Yes, I do wish --

23 Q. Well, you've already -- you've already testified, right,
24 and they asked you a bunch of questions?

09:00 25 A. I've answered yes and no answers, but I've never been able

1 to really give what my version is as far as my opinion as to
2 how this played out. I'd love an opportunity to give a
3 statement.

09:01

4 Q. Well, you had your chance. They asked you all the
5 questions they wanted to ask you, right?

6 A. I had a chance to answer questions, but I was not allowed
7 to give my perspective on this.

8 Q. Okay.

9 A. It was very limited.

09:01

10 Q. Okay. And would you agree with me that the credibility of
11 the people accusing Mr. Spotted Bear of things is very
12 important?

13 A. Yes, and I don't like their credibility being attacked.

09:01

14 Q. And that's fair, and I understand that, but you agree that
15 it's important, right?

16 A. Yes. Yes, I'll agree with that.

17 Q. And consistency in the versions of what happened, that
18 would be important too, wouldn't it?

09:01

19 A. Yes, and the consistency of the fact that there's three
20 young girls making the same accusations, yes.

21 Q. And has Sxxxxxx's version of events changed at all
22 throughout this process?

09:02

23 A. I've said this before. As a father, I don't want to know
24 what happened. I don't want to think about what happened. I
25 don't want to accept what happened. It just empowers it, so my

1 knowledge of this was the one-time deal. I've never focused on
2 it. I've never dwelled on it. I just try to move past it.

3 Q. And I respect that and understand that, but credibility is
4 important, right?

09:02

5 A. Yes.

6 Q. Consistency is important, right?

7 A. Yes, and I'd also say the credibility of those trying to
8 accuse or otherwise is important, and I don't think that will
9 come up.

09:02

10 Q. And if there are several stories or several versions,
11 that's important, isn't it?

12 A. Yes, and that's, again, part of my frustration, because I
13 know how this is going to play out.

14 Q. Well, we want to get to the truth. You've already said
15 that, right?

09:02

16 A. Yes, and I think there's going to be half-truths spoken
17 against her, manipulations, and I don't appreciate that.

18 MR. BOLINSKE: Okay. Thank you, sir. That's all I
19 have.

09:02

20 THE COURT: Mr. O'Konek, anything further?

21 MR. O'KONEK: No, Your Honor.

22 THE COURT: All right. Thank you, Mr. Hallam. You
23 may step down. You are excused.

24 THE WITNESS: Thank you, Your Honor.

09:02

25 THE COURT: You may call your next witness.

1 MR. O'KONEK: The United States would call Crystal
2 Hallam.

3 CRYSTAL HALLAM,
4 having been first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. O'KONEK:

8 Q. Good morning. Can I ask you to please state your full
9 name before the court?

10 A. Crystal Hallam.

11 Q. And you're the mother of Sxxxxxx?

12 A. Yes.

13 Q. Can you briefly just take us through who's all in your
14 family -- in your immediate family?

15 A. It's myself; Travis, her father; Cheyenne, her older
16 sister; Bheri Rose, her other -- another older sister; Alex,
17 her older brother.

18 Q. And Travis -- you and Travis were at one point married?

19 A. Yes, we were married.

20 Q. And we've previously heard from Travis about some things,
21 but I'd like to go over them with you. How old is Sxxxxxx?

22 A. Sorry?

23 Q. How old is Sxxxxxx?

24 A. She's 13.

25 Q. Are you a little bit nervous today?

1 A. Yes.

2 Q. Okay. What is her -- Sxxxxxx's date of birth?

3 A. 8/23/2004.

4 Q. And where does Sxxxxxx currently live?

09:05

5 A. She's in West Fargo.

6 Q. Who does she live with?

7 A. She lives with her older sister, Cheyenne, currently.

8 Q. And where does she go to school?

9 A. At Cheney Middle School.

09:05

10 Q. And what grade is she in?

11 A. Eighth grade.

12 Q. What are some of the things that Sxxxxxx likes to do for
13 fun?

09:05

14 A. She has a pet, Loki (ph). That's -- he keeps her
15 occupied. She feeds him and walks him and likes to hang out
16 with him. She -- when she's with me, we go to the lake. We'll
17 watch movies. She just enjoys just hanging out and just
18 relaxing and --

19 Q. Okay. And, now, what is your relationship to Ivetta
20 Spotted Bear?

09:06

21 A. She is Travis's aunt.

22 Q. Okay. And Nxxxx Hxxxxxx Exxxx, what is your relationship
23 to her?

09:06

24 A. Her grandfather, who's married to Ivetta, is -- we're
25 distantly related.

1 Q. And what is your relationship to Brad Sanderson?

2 A. No relation. It's through marriage.

3 Q. And what about Meranda Sanderson?

4 A. Through marriage.

09:06 5 Q. And Mxxxx Sxxxxxxxxx, the same sort of way?

6 A. Correct.

7 Q. What is your relationship to the defendant, Lonnie Spotted
8 Bear?

9 A. He is Travis's uncle.

09:06 10 Q. And what is his relationship -- Mr. Spotted Bear's
11 relationship to Sxxxxxx?

12 A. He is her grandfather, her -- I don't know how --

13 Q. Feel free to say. Is he grandfather, godfather, something
14 else?

09:06 15 A. It's -- her grandmother, Travis's mother, Alice, it's
16 Alice's brother, but they all call -- everybody calls him
17 Grandpa.

18 Q. Is he also Sxxxxxx's godfather?

19 A. No.

09:07 20 Q. Okay. And at some time before Sxxxxxx lived in New Town
21 or Fargo, did she ever live in Twin Buttes?

22 A. Yes.

23 Q. And from what ages, do you remember?

24 A. From newborn until the age of 11.

09:07 25 Q. Okay. And in Twin Buttes, how close did you live from

1 Lonnie Spotted Bear?

2 A. It was less than a mile away.

3 Q. Now, would Sxxxxxx ever spend time with one of her
4 cousins, Haylon?

09:07

5 A. Yes.

6 Q. And where did Haylon live at this time?

7 A. For the most part of it with his Grandma Diana and his
8 Grandpa Lonnie.

09:08

9 Q. Okay. And how often would you say that Sxxxxxx and Haylon
10 would hang out together in Diana and Lonnie's house?

11 A. It could vary. It could be once a month. It could be
12 twice a week. It just depends. It's usually when Haylon
13 wanted to hang out with her. He would call or have his grandpa
14 stop by and pick her up.

09:08

15 Q. And Haylon and Sxxxxxx are around the same age?

16 A. Yes, six months apart.

17 Q. Did Mr. Spotted Bear ever ask you to have Sxxxxxx play
18 with Haylon?

09:08

19 A. He would just stop over and say -- or call and say Haylon
20 wanted Sxxxxxx to come over and play.

21 Q. And take me through how this would come about. You said
22 he just kind of stopped over. Was that stopping over at your
23 house?

24 A. Yes.

09:08

25 Q. And how often would this happen?

1 A. Like I said, it could be anywhere from two days a week,
2 or it could be once a month. It could be -- it was just
3 randomly.

4 Q. And at some point your family goes to Cancun?

09:09

5 A. Yes.

6 Q. Approximately 2011 timeframe, did you go to Cancun with
7 Travis?

8 A. Yes.

9 Q. And where was Sxxxxxx at this time?

09:09

10 A. She was with Lonnie and Diana and Haylon.

11 Q. Okay. And this would have been, I think, approximately
12 April of 2011?

13 A. Around, yes.

14 Q. And why did you leave Sxxxxxx with Lonnie and Diana?

09:09

15 A. We thought they were the most safe people that we could
16 keep her with. She got along with Haylon. She had a playmate.
17 They were responsible to take her to school, make sure she got
18 home from school, to feed her. Diana was a very good caretaker
19 of children.

09:09

20 Q. And were there any other times that you left Sxxxxxx alone
21 with Haylon, Diana or Lonnie?

22 A. At the -- during the summertime all the kids and the
23 family, aunts, uncles, children would go to the lake. And it
24 could be Fourth of July or Labor Day or -- and a lot of them
25 just -- will just go down there and just spend the weekend.

09:10

1 MR. O'KONEK: Okay. Now, if I may, Your Honor,
2 permission to publish Government's Exhibit 3?

3 THE COURT: To publish what?

4 MR. O'KONEK: Government's Exhibit 3 briefly.

09:10

5 THE COURT: Sure.

6 Q. (MR. O'KONEK CONTINUING) And if you don't know the
7 answer, you can say you don't know, but yesterday we admitted
8 this photograph through Travis. And can you just identify the
9 people that are in the photograph?

09:10

10 A. Mxxxx is on the left. Sxxxxxx is in the middle, and Nxxxx
11 is on the right.

12 Q. Okay. And if you know, do you have an approximate time of
13 when the three of them would have been together?

09:11

14 A. According to her missing teeth, she would have been right
15 around five years old.

16 Q. And what do you mean, "according to her missing teeth"?

17 A. She had them pulled, and they took a while to grow back
18 in, so they were -- they're not grown in yet. She's still
19 pretty young.

09:11

20 Q. So based upon the fact --

21 A. Between five, six years old.

22 Q. So based upon the fact that she's missing teeth, you can
23 identify that she's about five or six years old?

24 A. Yes.

09:11

25 Q. Okay. And where was this photograph taken, do you know?

1 A. Down at the lake. I could see campers. I could see the
2 picnic table, Lonnie's camper. I'm not sure whose truck that
3 it is, and a couple tents, and they're standing on the
4 trampoline.

09:11

5 Q. And when you say "the lake," was this the lake near or on
6 Mr. Spotted Bear's property?

7 A. Yes.

09:12

8 Q. Okay. Thank you. And based upon that photograph, I think
9 you've already talked about it, but some of Sxxxxxx's cousins
10 or family members would spend time at the lake with her?

11 A. Yes.

12 Q. I want to talk a little bit about December of 2015, end of
13 December or early January. Were you in Cancun, Mexico, during
14 that time?

09:12

15 A. I was.

16 Q. In 2000 and -- it would have been December 2015, January
17 2016?

18 A. Yes.

09:12

19 Q. At that time did Sxxxxxx disclose to you that Mr. Spotted
20 Bear had sexually abused her?

21 A. No.

22 Q. When did she ultimately talk to you about that?

09:12

23 A. It was in January, early January. I actually left a few
24 days early. I needed to get back for work, so I left the
25 family a few days early and came back to North Dakota. Once --

09:13

1 Cheyenne and Cole, her boyfriend for years, they stopped by and
2 they just -- Sxxxxxx wasn't with them. She was at her dad's
3 house, and they just said, "Mom, I have some -- something to
4 tell you that's pretty bad." And I just -- I was like, "What
5 happened?" And she said -- she said, "Sxxxxxx was molested."
6 And I said, "What? What are you talking about?" And she told
7 me that Sxxxxxx told Cole and her while they were in Cancun,
8 after I had left, that her Grandpa Lonnie molested her.

09:14

9 And I -- all I could do was just sit and cry, and I
10 just -- I didn't want to believe it, but I know Sxxxxxx. She's
11 -- she would not lie about something like that. She's a very
12 honest little girl, and she doesn't -- she's not exposed to
13 things like that where she could come out and say something --
14 Q. And --

09:14

15 A. -- that awful like so --

16 Q. And, ma'am, have you noticed any changes or differences in
17 Sxxxxxx in the last few years?

09:15

18 A. Yes. She's a little more closed off, a little more quiet.
19 She's scared of -- she's scared of men. She -- and when she
20 was at my house, anybody who would knock on the door that
21 wouldn't call beforehand, she would run and hide, and I would
22 have to go look for her and tell her, you know, who it was, you
23 know, it was safe.

09:15

24 She hid -- she hid a knife. I was looking for a
25 knife, and I couldn't find it, so -- and I was looking all

09:16

1 over, and she asked what I was looking for. I told her I was
2 looking for a knife. And she's like, "Oh, I have that in my
3 room." And I didn't ask her. I knew why she would hide a
4 knife. She's scared. She's fearful, just -- she'd always look
5 for me and make sure I was visible. Anybody she was with, she
6 was that way.

09:16

7 Q. And was Sxxxxxx scared to come and testify here yesterday?
8 A. She's -- she's scared, but she knows that what happened
9 wasn't her fault. She knows, when I was talking to her, what
10 she had to do is the right thing to do.

11 MR. O'KONEK: Those are the only questions I have,
12 Your Honor.

13 THE COURT: Mr. Bolinske.

14 CROSS-EXAMINATION

09:16

15 BY MR. BOLINSKE:

16 Q. Just to clear up a couple of points, Sxxxxxx told Cole
17 about this, is that accurate?

18 A. Correct.

19 Q. And this was not when you were in Cancun?

09:16

20 A. No.

21 MR. BOLINSKE: Okay. Thank you. That's all I have.

22 THE COURT: Anything else?

23 MR. O'KONEK: No, Your Honor.

09:17

24 THE COURT: All right. Thank you, ma'am. You may
25 step down, and you are excused from these proceedings.

1 MR. O'KONEK: The United States would call Cheyenne
2 Hallam.

3 CHEYENNE HALLAM,
4 having been first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. O'KONEK:

8 Q. Cheyenne, I just have a couple of questions to go into
9 your background. Can you first just state your name for the
10 Court?

11 A. Yes, Cheyenne Hallam.

12 Q. Okay. And how old are you today?

13 A. Twenty-two.

14 Q. And where do you live?

15 A. Fargo, North Dakota.

16 Q. And who lives with you?

17 A. Cole Brewer and Sxxxxxx Hxxxxx, my sister.

18 Q. And who is Cole Brewer?

19 A. My boyfriend. We've been together for almost four years
20 now.

21 Q. And you mentioned Sxxxxxx also lives with you.

22 A. Yes.

23 Q. Who's Sxxxxxx to you?

24 A. She's my younger sister.

25 Q. Okay. And what -- where does Sxxxxxx go to school?

1 A. Cheney Middle School. It's only like a block down from
2 us.

3 Q. And just to go into background pretty quickly, your father
4 is Travis Hallam?

09:19

5 A. Yes.

6 Q. Mother is Crystal Hallam?

7 A. Yes.

8 Q. And you have a sister, Bheri, I believe?

9 A. Yeah, Bheri Rose.

09:19

10 Q. Okay. And what is your relationship to Mr. Lonnie Spotted
11 Bear?

12 A. He's my grandma's brother.

13 Q. Now I want to talk a little bit about Cancun, December
14 of 2015. Were you in Cancun during that timeframe?

09:19

15 A. Yeah.

16 Q. Take us through why you guys went there and who all went
17 with you.

18 A. We go there each year. My dad took my mom, I believe,
19 when she was pregnant with me, or something like that, for
20 their honeymoon. And every year since then he took us kind of
21 as a family tradition type of thing.

09:20

22 Q. And so when you say -- who all went with you on that year,
23 December of 2015?

24 A. Cole, Sxxxxxx, me, Bheri, my dad. My mom stayed back in
25 New Town that year.

09:20

1 Q. Okay. And so at some point while you were in Cancun, did
2 Sxxxxxx disclose that Mr. Spotted Bear had molested her?

3 A. Yeah.

4 Q. And can you briefly take us through where you were, who
5 was with you when this happened?

6 A. We were in me and Cole's hotel rooms. Me and Cole were
7 sitting on the bed talking, and Sxxxxxx come up and asked us if
8 she could tell us something. Cole got worried and he said
9 yeah. And she said that Lonnie molested Nxxxx, that he touched
10 her, and I -- I'll admit I was kind of shocked. I was like,
11 "Sxxxxxx, you don't" -- I was like, "You shouldn't say stuff
12 like that." I was like, "Are you sure?" And she's like,
13 "Yes," and she's like, "because it happened to me," and I
14 started crying.

15 And then Cole asked what happened, and I had to sit
16 there and I had to listen to her as she -- basically as she
17 told me that she was hanging out, I believe, at my Uncle
18 Daylon's house with Haylon. And, anyways, Lonnie kept asking
19 her to come back to the house because Haylon needed to find his
20 tablet. And Sxxxxxx kept saying no, she didn't want to go, and
21 he kept asking, so finally she's like, "Okay, fine, I'll go."

22 He took her back to his house and they were looking
23 for it for a little bit, and she said that he pushed her down
24 and he took down her leggings and her underwear and he -- he
25 licked her. And she was yelling. I think she said that she

09:22 1 kicked him in the face, and he laughed. He laughed, and then
2 he -- when he got up, he opened up his jacket and she saw the
3 tablet, and she asked if it was -- if it was there the whole
4 time. She can't -- I don't even know what happened. She can't
5 remember if she walked home, if she got drove home. She can't
6 even remember what happened.

7 Q. And this is what she had told you back in December
8 of 2015?

9 A. My dad?

09:22 10 Q. No, this is what Sxxxxxx had told you in December of 2015?

11 A. Yeah, me and Cole. And then Cole told us that we needed
12 to go tell my dad, and we walked over to his room because we
13 were both -- we were both scared. I don't know how you tell my
14 dad something like that. I don't know how you tell any dad
09:22 15 something like that, and she -- she told him, and my dad just
16 sat there and he told her it wasn't her fault, that she didn't
17 do anything wrong, that she needed to understand that she was a
18 little kid. She was like five.

19 Q. What was -- what was Sxxxxxx's demeanor when she was
09:23 20 talking with you?

21 A. She was crying the entire time. She was scared. She
22 didn't know how I was going to react, but she was more looking
23 at Cole because she was scared.

24 MR. O'KONEK: Those are the only questions I have.

09:23 25 Thank you.

1 THE COURT: Mr. Bolinske.

2 CROSS-EXAMINATION

3 BY MR. BOLINSKE:

4 Q. This Cancun trip, was this 2015, early part of 2016?

09:23

5 A. I can't remember. I remember who was there. I remember
6 we were in a hotel room.

7 Q. Okay. And the allegations that Sxxxxxx is talking about
8 were from what year?

09:23

9 A. I don't know. All I know is that she -- she said she was
10 like five or six. I don't -- I'm not going to ask her what
11 year.

12 Q. Okay. So it was five to six years earlier than when you
13 were told or Cole was told that this allegedly occurred?

14 A. That's not going to be going through my mind right then.

09:24

15 Q. I'm just asking if that's when it was.

16 A. I don't know. Yeah, it would have to be six, possibly.
17 Anywhere from five to seven, so I'd say six.

18 Q. Okay. And at that time either you or Cole was -- were
19 told something about opening a jacket and a tablet?

09:24

20 A. Yeah, she explained that, because that's the part that
21 bothered her. That's basically being premeditated.

22 Q. Okay. And do you know if that statement or that version
23 of reality has remained consistent throughout this process?

24 A. Yes, it has.

09:24

25 Q. Okay. And so Sxxxxxx you think has reported that fact or

1 this version to everyone involved in this process?

2 A. You know what, she probably did. I mean, when things like
3 that happen, are you really -- things will probably come in and
4 out. But, yes, if she did remember, she would say that.

09:25

5 MR. BOLINSKE: Okay. Thank you. That's all the
6 questions I have.

7 THE COURT: Anything else?

8 MR. O'KONEK: No, Your Honor.

09:25

9 THE COURT: Thank you, Cheyenne. You may step down,
10 and you are excused.

11 You may call your next witness.

12 MR. O'KONEK: United States calls Mxxxx Sxxxxxxxxx.

13 MXXXX SXXXXXXXXX,

09:26

14 having been first duly sworn, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. O'KONEK:

18 Q. Mxxxx, can I have you please pull the microphone as close
19 to you as possible? Thank you.

09:27

20 Can you please state your full name for the Court?

21 A. Mxxxx Sxxxxxxxxx.

22 Q. Okay. And, Mxxxx, you understand the difference between a
23 truth and a lie?

24 A. Mm-hmm.

09:27

25 Q. And you understand that you're only to talk about things

1 that are true in here?

2 A. Yep.

3 Q. And so if I were to tell you that this pen was red, what
4 would you tell me?

09:27

5 A. That it's blue.

6 Q. Okay. So to say that it's red would be a lie?

7 A. Yeah.

8 Q. Okay. Now, how old are you here today?

9 A. I'm 13.

09:27

10 Q. And what is your date of birth?

11 A. 12/30/03.

12 Q. I didn't catch that part. Can you say that again?

13 A. 12/30/03.

14 Q. 2003?

09:27

15 A. Yeah.

16 Q. And where do you currently live?

17 A. Bismarck, North Dakota.

18 Q. And who do you live with?

19 A. My mom and my sister and my mom's boyfriend.

09:28

20 Q. Okay. I want to take us through who those people are.

21 Can you just give us the names of the people that are in your
22 family?

23 A. Like everybody?

24 Q. Your mom, your dad, brother, sisters?

09:28

25 A. Well, Meranda Marcellais, Brad Sanderson, River Sanderson,

1 and Brayden Sanderson.

2 Q. Okay. So Meranda Sanderson is your mom?

3 A. Yeah.

4 Q. Brad Sanderson is your dad?

09:28

5 A. Yeah.

6 Q. And who were your -- I believe you had mentioned a brother
7 and a sister. Who are they?

8 A. Well, River and Brayden.

9 Q. Brayden is your brother?

09:28

10 A. Yeah.

11 Q. And he's 17 years old, I believe?

12 A. He's 18.

13 Q. He's 18 now. And then there's River, who is eight or
14 nine?

09:28

15 A. Nine.

16 Q. And where do you currently go to school?

17 A. Wachter Middle School.

18 Q. What grade are you in?

19 A. Eighth.

09:29

20 Q. What's one of your favorite subjects?

21 A. English.

22 Q. What do you like about English?

23 A. I like to like read, and stuff, so I like -- I don't know.

24 Q. What kind of stuff do you like to read?

09:29

25 A. Like biographies almost.

1 Q. Okay. Any ones that you like in particular?

2 A. Not really.

3 Q. Did you recently have an injury due to a volleyball
4 accident?

09:29

5 A. Yeah.

6 Q. Can you just briefly tell the Court a little bit about
7 that?

8 A. Well, I was playing volleyball, and I went up to hit, and
9 I came down, and I like rolled my ankle.

09:29

10 Q. Okay. And what happened after you rolled your ankle?

11 A. I got a boot and crutches.

12 Q. Okay. How long ago did that happen?

13 A. Like two or three weeks ago.

14 Q. Was that kind of a scary experience?

09:29

15 A. Kind of.

16 Q. And I'm going to just ask you kind of upfront, are you
17 kind of nervous being here today?

18 A. Yes.

19 Q. You told me you really didn't want to testify, didn't you?

09:30

20 A. Yep.

21 Q. And as we go through some of this, you remember that you
22 got to -- you have to tell the truth, right?

23 A. Yeah.

24 Q. Okay. So I want to talk to you a little bit about some
25 people that are your cousins. Do you know somebody named

09:30

1 Sxxxxxx?

2 A. Yeah.

3 Q. who's she?

4 A. well, she's my cousin. I don't know.

09:30

5 Q. Okay. And what about Nxxxx?

6 A. I think she's my cousin too.

7 Q. Are you closer to Sxxxxxx or Nxxxx?

8 A. Sxxxxxx.

9 Q. And what about a cousin named Haylon?

09:30

10 A. Oh, Haylon, yeah, he's my cousin too.

11 Q. what's his age in relationship to you?

12 A. He's 13, I think, and -- I don't know. He's my Uncle

13 Morley's son.

14 Q. Okay. And how are you related to Lonnie Spotted Bear?

09:31

15 A. I think I'm double-related. I don't know.

16 Q. Did you consider him to be like a grandfather?

17 A. Yeah.

18 Q. And did you ever used to spend time in Twin Buttes, North

19 Dakota?

09:31

20 A. (Nodding.)

21 Q. Is that a yes?

22 A. (Nodding.)

23 Q. I'm sorry. What we can, if you need to, take a little bit

24 of a break, and we'll just ask a couple more questions, okay?

09:31

25 So why did you go to Twin Buttes, just in general? who -- what

1 would be the reasons to go to Twin Buttes?

2 A. Well, we had like family reunions and Thanksgiving, and
3 stuff.

4 Q. Okay. And who would go with you from your family to Twin
5 Buttes?

6 A. My dad.

7 Q. That was Brad?

8 A. (Nodding.)

9 Q. Yes? And I'm sorry. We're going to have to keep asking
10 for verbal records, but I can indicate -- if you shake your
11 head, I'll just say that you shook your head, but can you try
12 to answer verbally?

13 A. Yeah.

14 Q. And I know this is tough, but I appreciate that. Did you
15 ever spend time with your cousin, Haylon, in Twin Buttes?

16 A. Yes.

17 Q. Did you ever spend time with Haylon when you were roughly
18 seven years old?

19 A. Yeah.

20 Q. Can you take us through what you remember when you were
21 hanging out with Haylon when you were seven?

22 A. Like what do you mean?

23 Q. Well, I guess I'll just ask upfront. Did Lonnie Spotted
24 Bear ever touch you inappropriately?

25 A. Yeah.

1 Q. Did that happen in Twin Buttes?

2 A. Mm-hmm.

3 Q. And I'm sorry to go into detail, but can you just describe
4 what happened?

09:32

5 A. Like -- like the whole -- like from like --

6 Q. Start wherever you feel comfortable.

09:33

7 A. Well, our grandmas -- like all the grandmas were in the
8 kitchen, and me, Haylon and Lonnie were wrestling in the living
9 room. And I don't know why, but we went upstairs and like we
10 all -- there's like a couch in Daylon's house, in the upstairs.
11 And like we sat down, and like it was me and Lonnie. And then
12 Haylon was coming up the stairs, and he had to go get something
13 downstairs, so he went down there, and then that happened. And
14 it was only like a minute, so like he came back upstairs
15 because he had his DS and he had to get something for it.

09:33

16 Q. And I appreciate you telling me that, and I want to go
17 into a little bit more detail, okay? Can you do that for me?
18 I know it's tough, but I promise I won't spend too much more
19 time on it, okay?

09:33

20 A. (Nodding.)

21 Q. So when you said that you were in Twin Buttes with Haylon,
22 where were you at? Were you at Lonnie's house, Uncle Daylon's
23 house, somewhere else?

24 A. Daylon.

09:33

25 Q. Okay. And who's Uncle Daylon?

1 A. He's my uncle.

2 Q. Okay. And where was your father at this time?

3 A. He was hunting.

4 Q. Okay. And do you know what he was hunting for?

09:34

5 A. Deer.

6 Q. Do you know where he was going hunting or who he was going
7 with?

8 A. It was Darby. That's all I remember, because he got hurt.

09:34

9 Q. Okay. And so at some point you had mentioned that you,
10 Haylon, and Lonnie were wrestling?

11 A. Yeah.

12 Q. And -- but at some point you went upstairs?

13 A. Yeah.

09:34

14 Q. Can you just describe Daylon's house for us so we can get
15 a better idea of what it looked like?

16 A. Well, you walk in and it's like really wide and open. And
17 to the right there's -- you just go upstairs, and it's not very
18 high upstairs, so you just walk upstairs. And then there's
19 like a little patio almost, and like you can see the living
20 room from the upstairs, and that's why there's like a couch
21 there, I'm pretty sure.

09:34

22 Q. Okay. And so at some point you mentioned something about
23 a couch. Where was Daylon when you and Lonnie were on a couch
24 together?

09:35

25 A. I don't know where he was.

1 Q. Do you know where Haylon went to?

2 A. He went downstairs to get something for his DS.

3 Q. What's -- is a DS like a Game Boy, like a portable gaming
4 console?

09:35

5 A. Yeah.

6 Q. So when you and Lonnie were, I guess, alone upstairs on
7 the couch, what happened?

8 A. Like he -- I don't feel like putting it into like detail.

09:35

9 Q. Okay. Well, let me ask it this way. When you guys were
10 on the couch, where are -- or how close are you guys sitting
11 together?

12 A. Close. It was a really small couch.

13 Q. Okay. And as you're sitting close together -- you already
14 said that Lonnie had touched you inappropriately. Just tell
15 us, what did he use? Did he use his hands or something else?

09:35

16 A. His hands.

17 Q. And what did Lonnie do with his hands?

18 A. What?

19 Q. What did Lonnie do with his hand or hands?

09:36

20 A. I don't --

21 Q. Did --

22 MR. BOLINSKE: Your Honor, can we approach for a
23 minute?

24 THE COURT: Sure.

09:36

25 (At the Court bench with counsel, out of the hearing

1 of the jury.)

2 MR. BOLINSKE: Your Honor, I guess I think he's
3 gotten what he's wanted. And I know what he's doing and
4 everybody knows what he's doing, but it's just too leading.
5 Sorry, but it is.

09:36

6 MR. O'KONEK: I haven't gotten her to say where he
7 touched her yet, on the vagina, which is an element of the
8 offense. I can lead. I'm trying to ask more open-ended
9 questions, but she's having difficulty. She told me she didn't
10 want to do this, and it's a bit hard for her, so I can lead if
11 that would be easier, and I can get in and out.

09:36

12 THE COURT: Well, I'm going to give him a little bit
13 of leeway, a leading question. I don't think Mr. O'Konek is
14 going to belabor the point. I think --

09:37

15 MR. BOLINSKE: No, he's doing it nice. I appreciate
16 that, but I just don't -- you know, I have to make the
17 objection.

18 THE COURT: Understood, so I'm going to overrule, but
19 I'll give you a little more leeway, and then let's try to move
20 on.

09:37

21 MR. O'KONEK: Yes, Your Honor.

22 (In open court with the defendant, counsel, and the
23 jury present.)

24 Q. (MR. O'KONEK CONTINUING) Mxxxx, I'm sorry about that. At
25 this time were you -- what were you wearing when this was going

09:37

1 on?

2 A. I was -- I was wearing a shirt and red shorts, like
3 basketball shorts.

4 Q. And did Lonnie touch your private parts with his hand over
5 your basketball shorts?

6 A. Yeah.

7 Q. Did he touch your vaginal area?

8 A. Yeah.

9 Q. Did he try to move his hand up your shorts as well?

10 A. No.

11 Q. What did he try to do after he touched your --

12 MR. BOLINSKE: Your Honor, can we approach again? I
13 mean, same objection. We don't need to approach, but --

14 THE COURT: All right. It's understood you have a
15 standing objection to these last few questions, which I will
16 overrule at this stage.

17 Q. (MR. O'KONEK CONTINUING) After Lonnie had touched you on
18 your vaginal area over your shorts, what did he do next?

19 A. He just stopped.

20 Q. Okay. And what happened after he stopped?

21 A. We went downstairs, and then I went to -- I went to the
22 bathroom, and I came back out, and then we just like listened
23 to music.

24 Q. Okay. And did you ever tell anybody about this?

25 A. No. I told someone when I was nine.

1 Q. Okay. Did you ever tell your mom?

2 A. Yeah, that's who I told.

3 Q. Okay. And when you were nine, why did this come up?

4 A. My mom was talking to us about like if anybody ever did
5 something to you, to tell her. And I started crying, and then
6 -- yeah, and then I told her.

7 Q. And you had told her that Lonnie had touched your vagina
8 over the clothing?

9 A. Yeah.

10 MR. O'KONEK: Those are the only questions I have,
11 Your Honor.

12 THE COURT: Mr. Bolinske.

13 CROSS-EXAMINATION

14 BY MR. BOLINSKE:

15 Q. Is it fair to say that you're -- you're friends with
16 Sxxxxxx, right?

17 A. Yeah.

18 Q. And you're friends with Nxxxxx?

19 A. Yeah.

20 Q. And have you discussed these things with Sxxxxxx?

21 A. No.

22 Q. You've never discussed these things with Sxxxxxx?

23 A. Hmm-mm.

24 Q. Have you discussed them with Nxxxxx?

25 A. No.

1 Q. Did you discuss them ever with Ivetta Spotted Bear?

2 A. No.

3 Q. You discussed them -- who have you discussed them with?

4 A. Basically just my mom.

09:40

5 Q. Do you remember going to what's called -- do you know what
6 a forensic interview is?

7 A. No.

8 Q. Do you remember going to a place where they asked you a
9 bunch of questions?

09:40

10 A. Yeah.

11 Q. And you test -- you mentioned earlier that your -- this
12 was a deer hunting trip at whose house, or a reunion or a --

13 A. Daylon.

14 Q. At Daylon's house. And your grandmothers were in the
15 kitchen?

09:40

16 A. Yeah.

17 Q. And is the kitchen upstairs?

18 A. Upstairs?

19 Q. Where's the kitchen?

09:40

20 A. It's downstairs.

21 Q. Okay. But your grandmothers were at the house during this
22 event?

23 A. Yeah.

24 MR. BOLINSKE: Okay. Thank you. That's all I have.

09:40

25 THE COURT: Any other questions?

1 MR. O'KONEK: No, Your Honor.

2 THE COURT: All right. Mxxxx, you may step down.

3 Thank you.

4 MR. O'KONEK: The United States would call Meranda
09:41 5 Sanderson.

6 MERANDA SANDERSON,

7 having been first duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

09:41 10 BY MR. O'KONEK:

11 Q. Good morning. I just have a couple of background
12 questions. Could you please just start by stating your full
13 name for the Court?

14 A. Meranda Marcellais.

09:42 15 Q. And you're the mother of Mxxxx?

16 A. Yes.

17 Q. And can you basically just take us through who's all in
18 your family, who lives in your household?

19 A. It's myself and my two daughters and, well, my son,
09:42 20 Brayden, Mxxxx, River.

21 Q. And you were formerly married to Brad Sanderson?

22 A. Yes.

23 Q. And I believe -- and correct me if I'm wrong, but Brad is
24 -- Brad Sanderson's mother is, I believe, the sister of
09:42 25 Lonnie's wife?

1 A. Yes.

2 Q. And what is your relationship to Lonnie Spotted Bear?

3 A. He is my uncle. His dad and my grandpa were first
4 cousins, and that's our relation, known him my whole life.

09:42

5 Q. And are you kind of nervous to testify here today?

6 A. I'm just really upset.

7 Q. Okay. I'll try to be as quick as possible. Can you take
8 us through just briefly Mxxxx's age? That's okay. You can
9 take a minute if you need to compose yourself.

09:43

10 A. She's 13.

11 Q. And what's her date of birth?

12 A. December 30, 2003.

13 Q. And where does she go to school?

14 A. Wachter.

09:43

15 Q. And what grade is she in?

16 A. Eighth.

17 Q. What are some of Mxxxx's favorite activities?

18 A. She loves volleyball, and she sings. She dances. She's
19 just a very outgoing kid, you know, but volleyball is her
20 favorite.

09:43

21 Q. And what is Mxxxx's relationship with Lonnie Spotted Bear?

22 A. She doesn't have one with him right now.

23 Q. But is he -- does she consider him a grandfather?

24 A. At one time, yeah.

09:44

25 Q. And did you -- or I should say this, but did Mxxxx ever

1 spend time in Twin Buttes when she was younger?

2 A. Yep.

3 Q. And who would she go and visit in Twin Buttes?

4 A. She would go visit them, their family.

09:44

5 Q. And by "them" -- and by "them," you mean?

6 A. Lonnie and Diana, and it would usually be for Thanksgiving
7 or something going on, you know, family-wise, brandings.
8 They'd go with their dad.

9 Q. And when you say "brandings," what do you mean by that?

09:44

10 A. Cattle brandings. They ranch, and so they would go out
11 there for that.

12 Q. And how often would you say -- and you don't -- if you
13 don't know an exact number, you can just kind of approximate,
14 but how often would you say that Mxxxx would go and spend time
15 with Daylon -- Uncle Daylon or Haylon -- her cousin, Haylon?

09:44

16 A. It wasn't -- it wasn't a lot, not too often. I mean, a
17 few times a year maybe. I mean, just for holidays or when
18 they'd see them -- because every family event they have,
19 birthdays or Christmas or whatever, they always were going to
20 be around each other because Brad would take the kids, you

09:45

21 know, during holidays. And then they would go either to their
22 Grandma Vetta's, who's Diana's mother in Keene, or they would
23 go to Twin Buttes, you know, like for Thanksgiving, or like I
24 said, for the brandings in May. You know, it just depended on,
25 you know, when Brad had them.

09:45

1 Q. And I want to talk to you a little bit about a
2 conversation that Mxxxx had with you. At any point did you
3 ever give a talk with Mxxxx about places that people shouldn't
4 touch on her body?

09:45

5 A. Yes.

6 Q. And do you remember approximately when this happened, or
7 if you don't know that, what age Mxxxx would have been?

09:45

8 A. Well, I've always, you know, had a -- I've had a talk with
9 her in the past, and -- but when this came -- are you talking
10 about when this came up?

11 Q. Yes, ma'am.

09:46

12 A. She had to be around -- I moved up here in 2011, and so it
13 was the second year. She had to be around nine, third or
14 fourth grade. And I was having a conversation with her and
15 River about if anybody ever messes with her, does anything to
16 them or touches them in any way, or anything, that they could
17 always tell me, that it's okay, because I had just gotten -- I
18 had just heard about -- I had seen something about another --
19 something happened to some kids, you know, because I'm a nurse.
20 I work with a lot of difficult things sometimes and come across
21 things, and it just didn't sit right with me, so I had this
22 conversation with them.

09:46

23 And Mxxxx just broke down at that time. She just
24 started crying, and I didn't really understand why, what -- you
25 know, and it took her a little bit to tell me. And then she

09:46

1 said that something had happened to her, that somebody had done
2 something like that to her.

3 Q. And did you ask who had done that to her?

4 A. Yeah.

09:46

5 Q. And what did Mxxxx say?

6 A. She said it was Lonnie.

7 Q. Did she say -- and tell us as much detail as she actually
8 told you, but did she say what had happened?

09:47

9 A. She wouldn't -- she wouldn't -- Mxxxx is very -- I mean, a
10 very -- it's really hard for her to talk about stuff like this,
11 and -- but what she told me was that they were there for -- she
12 was saying in her mind she's remembering a family reunion, but
13 I know it had to have been Thanksgiving at the time.

14 Q. Why do you say it had to have been Thanksgiving?

09:47

15 A. Because that's when they were there, and their dad -- they
16 were there with him by themselves. They were left with Lonnie
17 while they went hunting, and then the grandmas and all them
18 went to Black Friday shopping, or whatever. It's what they
19 like to do, and that's when that took place.

09:47

20 Q. And you've known your daughter all your life, obviously?

21 A. Mm-hmm.

22 Q. And is she a truthful person?

23 A. Yes.

09:47

24 MR. O'KONEK: Thank you. Those are the only
25 questions I have.

1 THE COURT: Mr. Bolinske.

2 MR. BOLINSKE: I think I just have a couple.

3 CROSS-EXAMINATION

4 BY MR. BOLINSKE:

09:47

5 Q. So at this Thanksgiving, the grandmothers were not home
6 during this event?

09:48

7 A. I don't know for sure. They -- I know they went Black
8 Friday shopping, and I don't know if this happened when they
9 were gone or if it happened when they were there because, I
10 mean, Mxxxx was so little, you know, so I don't know if her --
11 in her mind, if it was -- if people were -- what she's
12 remembering -- you know, she remembers what happened, but as to
13 who was all there and the details of it, it's pretty hard to,
14 you know, determine if they were there or not.

09:48

15 Q. Okay. So you don't know who was at the house at that
16 time?

17 A. Not everybody, no.

18 Q. And were you at the house at that time?

19 A. No.

09:48

20 Q. Were you shopping or --

21 A. No, they were with their dad. We were divorced. We were
22 divorced in 2008.

23 Q. Okay.

24 A. So he went there with them -- or she went there with them.

09:48

25 Q. So Brad would be -- he'd be a better guy to know about who

1 was there?

2 A. He would know who was there specifically.

3 MR. BOLINSKE: Okay. Thank you. That's all I have.

4 MR. O'KONEK: Just one brief question, Your Honor.

09:48

5 REDIRECT EXAMINATION

6 BY MR. O'KONEK:

7 Q. So the last question I'll ask you, ma'am, is why didn't
8 you report this to the police when Mxxxx had disclosed?

09:49

9 A. It had been -- like I said, it was probably three, four
10 years after it had happened, and I didn't know that anything
11 could even be done anymore. I didn't know -- I mean, I didn't
12 -- I didn't know what I could do, to be honest, and all I could
13 do was just not ever let her go back there again, and she was
14 never allowed to go back around him again, or any of my kids to
15 go back there and be around that place or anybody, and they
16 haven't been, so that's all I could do.

09:49

17 And then, you know, and I love this family. This was
18 my family, you know. Like I was close to Lonnie and his kids
19 and everybody, and I trusted him with my kids, so this is
20 really hard on a lot of people.

09:50

21 Q. And you didn't want Mxxxx to have to testify here today?

22 A. No. No.

23 MR. O'KONEK: Those are the only questions I have.

24 Thank you.

09:50

25 THE COURT: Anything else?

1 MR. BOLINSKE: No.

2 THE COURT: All right. Thank you, ma'am. You may
3 step down.

4 MR. O'KONEK: The United States calls Mr. Brad
5 Sanderson.

6 BRADLEY SANDERSON,
7 having been first duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. O'KONEK:

11 Q. Mr. Sanderson, can I have you pull the mike as close as
12 possible to you just so it amplifies the sound?

13 Can you just state your full name for the Court?

14 A. Bradley Gene Sanderson.

15 Q. And you are Mxxxx Sanderson's father?

16 A. Yep.

17 Q. And you were formerly married to Meranda Sanderson?

18 A. Yes.

19 Q. What is your relationship to Lonnie Spotted Bear?

20 A. He's my uncle.

21 Q. And let's talk a little bit about Mxxxx. She's 13 years
22 old?

23 A. Yes.

24 Q. And what's her date of birth? Is she born in 2003?

25 A. Yeah, December 31st, I believe.

1 Q. And where is Mxxxx -- where does Mxxxx live, here in
2 Bismarck, somewhere else?

3 A. Yep, Bismarck, with her mom and with me.

4 Q. Okay. And do you guys share --

09:53

5 A. Off and on.

6 Q. -- share custody?

7 A. Yep.

8 Q. Now, what is your relationship to Ivetta Spotted Bear?

09:53

9 A. Through marriage, I guess. My mom's sister, Diana, is
10 married to Lonnie, so --

11 Q. And I just have a couple of brief questions. In November
12 of 2009, did you visit Mr. Spotted Bear's -- Mr. Spotted Bear
13 with Mxxxx to go on a hunting trip?

09:53

14 A. Yeah, we go there to go hunting and then have
15 Thanksgiving, get together as a family.

16 Q. Okay. And when you say we do this, is that like a normal
17 occasion, like every Thanksgiving?

18 A. Mm-hmm.

09:54

19 Q. And take us through kind of what you guys do. Who do you
20 go hunting with when you go hunting at Thanksgiving?

21 A. Usually the guys, we'll go out, whoever is there. It's
22 usually, you know, Morley and Darby and Lonnie and my dad.
23 And, you know, the guys like to go hunting together and get
24 away from the girls, I guess, and then they go and do their
25 shopping.

09:54

1 Q. Okay. And at some point Mxxxx had been with you when --
2 not hunting, but she had gone with you to stay with Uncle
3 Daylon, I believe?

4 A. Yeah.

09:54

5 Q. And who's -- who's Daylon?

6 A. Daylon is my cousin.

7 Q. Okay. And would Mxxxx ever spend time with her cousin,
8 Haylon?

9 A. Yeah.

09:54

10 Q. Okay.

11 A. We're family.

12 Q. And they're around the same age?

13 A. Yeah.

14 Q. And they hang out a lot together?

09:54

15 A. Not a lot. It's just, I guess, family events.

16 Q. Okay. And in November 2009, do you remember if Mxxxx had
17 said anything to you when you guys were leaving Twin Buttes?

18 A. Excuse me? Come again.

19 Q. When you were leaving Twin Buttes, did Mxxxx say anything
20 to you about anything that happened over Thanksgiving?

09:55

21 A. No.

22 Q. Okay. But there was a time when you had left Mxxxx at
23 Daylon's place to go hunting?

24 A. Yes.

09:55

25 Q. Okay.

09:55

1 A. We usually leave -- try to leave early, when it's still
2 dark, so, yeah, we just kind of do our own thing and, I guess,
3 pretty much let the ladies or whatever -- whoever takes care of
4 the kids. We just kind of worry about going and getting a
5 deer, I guess. You know, that's what we do.

6 MR. O'KONEK: Okay. Those are the only questions I
7 have, Your Honor.

8 THE COURT: Mr. Bolinske.

09:56

9 MR. BOLINSKE: I don't have any questions. Thank
10 you.

11 THE COURT: All right. Thank you, sir. You may step
12 down.

13 THE WITNESS: Okay.

14 THE COURT: You may call your next witness.

09:56

15 MR. O'KONEK: The United States would call Christal
16 Halseth.

17 CHRISTAL HALSETH,

18 having been first duly sworn, was examined and testified as
19 follows:

09:56

20 DIRECT EXAMINATION

21 BY MR. O'KONEK:

22 Q. All right. Good morning. Could you please state your
23 full name for the Court?

24 A. Christal Halseth.

09:57

25 Q. Okay. And where do you currently work?

1 A. At the Northern Plains Children's Advocacy Center.

2 Q. Okay. And what is the Northern Plains Children's Advocacy
3 Center?

09:57

4 A. We -- what we do there is we respond to allegations of
5 child abuse.

6 Q. Okay. And what is your job or position at the advocacy
7 center?

8 A. I'm the executive director.

9 Q. And how long have you held that position?

09:57

10 A. Three years. Before that I was the forensic interviewer.

11 Q. And for how long have you been a forensic interviewer?

12 A. Six years altogether.

13 Q. What are some of your job responsibilities at the advocacy
14 center?

09:58

15 A. I conduct forensic interviews. I oversee the daily
16 operations of the agency. I seek funding for the agency and
17 write grants, and I coordinate multidisciplinary teams.

18 Q. And when we refer to a forensic interview, what is a
19 forensic interview?

09:58

20 A. A forensic interview is a -- it basically means gathering
21 information, so what we're doing is gathering -- gathering a
22 statement from a child.

23 Q. And we'll go into that in just a second. I'd like to go
24 into some more about your, I guess, education and experience.

09:58

25 Take us briefly through your education and history.

1 A. I graduated from Minot State University in 2008 with a --
2 with a degree in social work. And then I graduated from
3 Florida State University in 2011 with a Master's degree in
4 clinical social work.

09:58

5 Q. And what kind of training did you get on how to conduct
6 forensic interviews?

7 A. We went -- I went through the training through the
8 National Children's Advocacy Center in Huntsville, Alabama, in
9 2011.

09:59

10 Q. Do you have to do any continuing educational requirements?

11 A. Yes, at the center we strive for 30 hours per year.

12 Q. And did you also get any education or experience on things
13 like why victims of sexual abuse might have a delayed outcry?

14 A. Yes, throughout -- throughout my education, yes.

09:59

15 Q. And how many forensic interviews would you say you've
16 completed?

17 A. Approximately 1,200.

18 Q. And is your child advocacy center accredited by any
19 organization?

09:59

20 A. Yes, by the National Children's Alliance.

21 MR. O'KONEK: Permission to approach, Your Honor?

22 THE COURT: You may.

23 MR. O'KONEK: I'm handing the witness Government's
24 Exhibit 4.

09:59

25 Q. (MR. O'KONEK CONTINUING) I know this kind of sounds like

1 a silly question, but is this your curriculum vitae?

2 A. Yes.

3 Q. And how do you know that?

4 A. It looks like my academic history and experience.

10:00

5 Q. And you wrote it, I imagine?

6 A. Yes, I did.

7 Q. Can you take a look at it and just tell me if that's a
8 fair and accurate depiction of your curriculum vitae?

9 A. Yes.

10:00

10 MR. O'KONEK: At this time, Your Honor, government
11 would move Government's Exhibit 4 into evidence.

12 MR. BOLINSKE: No objection.

13 THE COURT: Exhibit 4 is received.

10:00

14 Q. (MR. O'KONEK CONTINUING) Now, ma'am, I want to talk a
15 little bit about a forensic interview kind of in general. Does
16 your agency follow any guidelines when conducting child
17 forensic interviews, any protocols?

18 A. Yes.

19 Q. Can you briefly take us through what those are?

10:01

20 A. Well, there's several stages in the protocols that we
21 follow. The first stage is the -- it's a stage where we build
22 rapport with the child. It's very brief. We talk to the child
23 about a -- about, you know, just a subject that's unrelated to
24 why we're interviewing them. And during that time we're kind
10:01 25 of gauging their developmental level. And we go through the

1 guidelines of the interview and the equipment of the interview.

2 And then from there we go into the practice
3 narrative, and again, we're still talking about something
4 that's neutral and just so that the child understands that
5 we're going to be asking questions.

6 Then we go through the disclosure stage, and that's
7 where the child at that point is disclosing or not disclosing
8 regarding the incident.

9 After that we go back to the clarification stage,
10 where we clarify anything that -- any parts of the interview
11 that needs to just be clarified, like body parts and things
12 like that.

13 And then after that we go through the closure stage,
14 where we talk about safety and then talk again about a neutral
15 subject.

16 Q. And that's kind of like an example of a forensic interview
17 from start to finish?

18 A. Yes.

19 Q. Now, who is -- what kind of guidelines do you follow in
20 terms of who certifies those guidelines or who created them?

21 A. That's the National Children's Advocacy Center.

22 Q. And what's the purpose of -- I should ask -- the first
23 question is, do you follow those guidelines in every interview?

24 A. Yes.

25 Q. And what is the purpose of those guidelines from the

1 advocacy alliance?

2 A. The purpose of that is just -- you know, we don't want to
3 just go in there and interview a child. Those protocols
4 include that we're not asking leading questions, things like
5 that, and it just -- it then elicits narrative from the child
6 regarding an event.

7 Q. Now, you mentioned that you try to prevent -- you know,
8 you don't -- you guys don't ask leading questions, you had
9 mentioned?

10 A. Right.

11 Q. Is it also to try to, I guess, avoid any maybe potential
12 contamination before the interview, planting information that
13 the child may not know about?

14 A. Yes, we do not -- we do not bring in information.

15 Q. How do you receive a referral for a child to be
16 interviewed at the advocacy center?

17 A. We receive referrals from either law enforcement or Child
18 Protection Services.

19 Q. Okay. And where is your agency located?

20 A. Our -- the agency I work for is in Minot, and it's located
21 in the second floor of an office building.

22 Q. Okay. So before you do an interview, how -- how do the --
23 do you separate the child from the guardian or something else?
24 Can you briefly take us through how the child actually ends up
25 in the interview room?

10:04

1 A. Well, upon -- when the family and the child come into the
2 interview -- or the Children's Advocacy Center, the family
3 advocate provides a tour for both the family and the child of
4 the center. They then go into the family room, and then I come
5 and get the child and bring the child into the interview room,
6 and the family waits in the -- in the waiting room during the
7 interview.

10:04

8 Q. Okay. Now, when you are doing these interviews, do you
9 record the interviews you do in that -- the room where you
10 actually do the interview?

11 A. Yes.

12 Q. And how do you do that? What kind -- I guess not maybe
13 what software, but what kind of device do you use to record the
14 interviews?

10:04

15 A. Ours is called Encore, but it's -- it's a -- it's a video
16 system. The monitor is in an observation room down the hall,
17 and the cameras are inside the interview room.

18 Q. And when you first come into -- what do you tell the
19 children about the room and the devices that are there?

10:05

20 A. The family advocate will point out where the camera and
21 microphone is in the room and explain to the child that -- that
22 somebody named Christal will be speaking with them in the room.

10:05

23 Q. And when you first speak with the child, you mentioned the
24 rapport-building phase, but are you trying to avoid any sort of
25 like subjectivity that might come from that, from the interview

1 -- I guess implanting ideas, things like that?

2 A. Yeah, we only -- we really only speak about general or a
3 neutral subject. Usually I ask about school, or something.

4 Q. Now, in this case you conducted two forensic interviews,
5 first of Nxxxx Hxxxxxx Exxxx and then of Sxxxxxx Hxxxxx?

6 A. Yes.

7 Q. I believe that was on, and correct me if I'm wrong,
8 March 25th of 2016?

9 A. Yes.

10 Q. And how did you learn about the case? How did you get the
11 referral?

12 A. I believe we got the referral from the victim specialist,
13 Paula Bosch, from the FBI.

14 Q. And so I don't want to go into the interviews, themselves.

15 We'll see them, I guess, for ourselves, but when you first
16 spoke with Nxxxx, did you tell her what questions you were
17 going to be asking before you got into the interview room?

18 A. No.

19 Q. And when you spoke first with Sxxxxxx, did you tell her
20 what questions you'd be asking?

21 A. No.

22 Q. Did the children ever, when you do an interview, know what
23 questions you're going to ask?

24 A. No.

25 Q. And when you initially did the forensic interview -- I

1 want to start first with Nxxxx. Was she made aware that the
2 interview would be recorded?

3 A. The family advocate would have done that.

4 Q. And was your recording software working properly during
5 that time?

6 A. Yes.

7 MR. O'KONEK: Approach the witness with Government's
8 Exhibit 6.

9 Q. (MR. O'KONEK CONTINUING) Is this the forensic interview
10 that you had conducted with Nxxxx Hxxxxxx Exxxx?

11 A. Yes.

12 Q. Is that a fair and accurate depiction of your interview
13 that you conducted with her?

14 A. Yes.

15 Q. And have you reviewed the video?

16 A. Yes, I did.

17 Q. Did you put your initials and date when you reviewed it?

18 A. I did.

19 MR. O'KONEK: Okay. At this time, Your Honor, we'd
20 request that Government's Exhibit 6 be admitted into evidence.

21 MR. BOLINSKE: No objection.

22 THE COURT: Exhibit 6 is received.

23 MR. O'KONEK: Permission to publish, Your Honor?

24 THE COURT: You mean play the video?

25 MR. O'KONEK: Yes.

1 THE COURT: And it's how long?

2 MR. O'KONEK: This one, I think, is about 35 minutes,
3 Your Honor.

4 THE COURT: All right. We'll watch that, and then
5 we'll take a break.

6 (Government's Exhibit 6 is played in open court.)

7 MR. O'KONEK: And if I could have you just pause real
8 quick here.

9 Q. (MR. O'KONEK CONTINUING) Before we get started with the
10 video, can you just briefly describe what is all located in the
11 room? I know you might go through that in the video, just so
12 we're kind of aware before anybody comes in.

13 A. You can see the small plate on the wall. That's the
14 microphone. The camera is up in the ceiling, pointing down at
15 the two chairs. I sit in the chair that's to the right of the
16 screen, and the child sits in the other chair, and there's a
17 table with Kleenex on it.

18 MR. O'KONEK: And you can play the video.

19 (Government's Exhibit 6 is played in open court.)

20 THE COURT: Mr. O'Konek, we'll take a break at this
21 time. Members of the jury, we'll stand in recess for about
22 20 minutes. We'll try to reconvene about five minutes after
23 11:00.

24 MR. BOLINSKE: Your Honor, can we meet for two
25 minutes after the jury leaves?

1 THE COURT: Oh, sure, that's fine. But please don't
2 visit amongst yourselves during the break, and we'll see
3 everyone back in about 20 minutes.

4 (The jury exits the courtroom.)

10:44

5 THE COURT: We're outside the presence of the jury
6 now. Mr. Bolinske?

7

MR. BOLINSKE: I guess, Your Honor, I'm not quite
8 sure how to handle this, but the redacted CD is missing a big
9 part of what I talked about in my opening statement. It's
10 Sxxxxxx's conversation with Nxxxx and the other witnesses that
11 the government had that's extremely relevant to this case.

10:45

12 THE COURT: You're entitled to play that.

13 MR. O'KONEK: And I've given -- I let the defense
14 know on Friday which portions we'd be taking out. My fear was,
15 I didn't want to prejudice the defendant by having that
16 statement in and then, say, Sxxxxxx gets up on the stand and
17 freezes and doesn't say anything. Then we have this hearsay
18 statement saying that he molested another child, so I -- we're
19 trying to balance, I guess, the protection of the accused, but
20 also I have no objection to playing those portions if the
21 defense -- we have the time.

10:45

10:45

22 THE COURT: We've got the rule of completeness. The
23 exhibit -- any portions of that interview can be played that
24 were not played, so --

10:45

25 MR. BOLINSKE: Okay. And I would request that, Your

1 Honor, and if I play them, or if they play them, or --

2 THE COURT: And how do you intend to do that, play
3 the whole video again?

4 MR. BOLINSKE: Well, it's not necessary, but I just
10:46 5 -- however you think you can do it, just play -- because I
6 think it starts about 23 minutes or 22 minutes in, and there's
7 a --

8 MR. O'KONEK: We have the time hacks of everything we
9 took out, so we can just play those time hacks. It should be
10:46 10 pretty easy.

11 THE COURT: But do you want to do that when we come
12 back right away, or --

13 MR. BOLINSKE: Sure. Yeah.

14 MR. O'KONEK: That's fine.

10:46 15 THE COURT: I mean, we can do it that way, or we can
16 wait until you get to your cross-examination and play it at
17 that time.

18 MR. BOLINSKE: Well, I mean, I don't have my stuff
19 here. I mean, can I ask them to play it?

10:46 20 THE COURT: Oh, sure.

21 MR. O'KONEK: Absolutely. No problem.

22 MR. BOLINSKE: Yep, that's fine. Let's do it during
23 the cross then.

24 THE COURT: Okay. And are you about done with your
10:46 25 questions?

1 MR. O'KONEK: Of her, I have the second interview of
2 the second child. The only issue with that one is there was an
3 allegation in that second interview where Sxxxxxx says she
4 believes another child was molested by the defendant, where she
10:46 5 says they're wrestling and he grabbed her crotch, and so I took
6 that part out. And I think that that's one of those that we
7 didn't want to include in the record.

8 So there have been redactions, along with
9 conversations she had with other people like about Nxxxx, in
10:47 10 case Nxxxx didn't say something. So we can certainly use the
11 rule of completeness for that one as well, but that's the
12 concern. I didn't want an appellate issue if another uncharged
13 victim was disclosed during a forensic interview.

14 THE COURT: Well, the two of you work it out about
10:47 15 what redacted portions that Mr. Bolinske wants played, and
16 we'll play them whenever he wishes to do so during his
17 cross-examination.

18 MR. O'KONEK: Yes, sir.

19 MR. BOLINSKE: Thank you.

10:47 20 THE COURT: All right. Thank you.

21 (A recess was taken from 10:47 a.m. to 11:08 a.m.,
22 the same day.)

23 THE COURT: We are back on the record in this case,
24 and as soon as Ms. Halseth gets comfortable, you can continue
11:09 25 with your questioning, Mr. O'Konek.

1 MR. O'KONEK: Ms. Halseth, I just want to remind you
2 you're still under oath.

3 And at this time, Your Honor, we'd request to move
4 Government's Exhibit 12. We just marked it. It's the complete
5 copy of the interview that includes dead space and a
6 couple-minute conversation between Nxxxx and Sxxxxxx. Talked
7 with defense. They don't have any objection. Just to complete
8 the record, we thought we would do that at this time.

9 THE COURT: This is a complete interview of --

10 MR. O'KONEK: Of Nxxxx, so it's -- it has all the
11 dead space included, and then there's one conversation --

12 THE COURT: All right. Mr. Bolinske?

13 MR. BOLINSKE: That's great.

14 THE COURT: Exhibit 12 will be received then.

15 Q. (MR. O'KONEK CONTINUING) All right. Ms. Halseth, I just
16 have a couple of questions about your interview with Ms.
17 Sxxxxxx Hxxxxx. Did you conduct that interview on the same day
18 as you conducted the Nxxxx Hxxxxxx Exxxx interview?

19 A. Yes.

20 Q. And do you remember which order you did them at this
21 point?

22 A. I believe Sxxxxxx was first, but I'm -- I would have to
23 look back on that to check.

24 Q. And when you first interviewed -- I guess before you
25 interviewed Sxxxxxx, was she informed that the interview would

1 be recorded?

2 A. That would -- the family advocate would have done that.

3 Q. And ultimately when -- you've talked about the guideline
4 kind of procedures that the CAC follows. Did you follow those
5 same procedures when you interviewed Sxxxxxx?

6 A. Yes.

7 Q. Oh, I guess before I do that, I forgot one thing. I
8 apologize. When you did your interview of Nxxxx Hxxxxxx Exxxx,
9 there was a point where she had actually circled something on a
10 body diagram. Do you remember that?

11 A. Yep.

12 Q. Okay. I'm going to approach here with Government's
13 Exhibit 7. Do you recognize this document?

14 A. Yes.

15 Q. What is it?

16 A. This is the anatomical drawing that we used during the
17 interview.

18 Q. And when you say "we used during the interview," could you
19 be more specific?

20 A. The one I introduced to Nxxxx.

21 Q. And is that the diagram that Nxxxx circled the crotch
22 portion of where she was touched?

23 A. Yes.

24 Q. Is that a fair and accurate depiction of where Nxxxx
25 circled on that diagram?

1 A. Yes.

2 MR. O'KONEK: At this time, Your Honor, we would move
3 Government's Exhibit 7 into evidence.

4 MR. BOLINSKE: No objection.

11:11

5 THE COURT: Exhibit 7 is received. And, members of
6 the jury, you'll get all of these exhibits when you go back to
7 deliberate.

11:11

8 Q. (MR. O'KONEK CONTINUING) All right. I apologize for kind
9 of going out of order, but going back to Sxxxxxx, when you did
10 the recorded interview with her, you mentioned she knew it was
11 recorded, but was your system working correctly?

12 A. Yes.

13 Q. And what kind of a system do you use again to record
14 interviews?

11:11

15 A. It's an Encore system, and it's a camera system inside of
16 the interview room, and the monitor is in the observation room.

17 Q. And how did you first get referred? How did Sxxxxxx get
18 referred to your agency?

19 A. That was, again, by Victim Specialist Paula Bosch.

11:12

20 Q. I'm approaching with Government's Exhibit 8. Is this the
21 interview that you had conducted with Sxxxxxx?

22 A. Yes.

23 Q. And there have been some edits regarding dead space and
24 things like that to that interview?

11:12

25 A. Mm-hmm.

1 Q. Have you reviewed that interview?

2 A. Yes, I did.

3 Q. And is that a fair and accurate depiction of the interview
4 that you conducted with Sxxxxxx?

11:12

5 A. Yes.

6 Q. Are those your initials and date of when you reviewed it?

7 A. Yes.

8 MR. O'KONEK: Okay. At this time, Your Honor, we'd
9 request Government's Exhibit 8 be moved into evidence.

11:12

10 MR. BOLINSKE: No objection.

11 THE COURT: Exhibit 8 is received.

12 MR. O'KONEK: Permission to publish? It's
13 approximately 25 minutes.

14 THE COURT: Very well.

11:12

15 (Government's Exhibit 8 is played in open court.)

16 Q. (MR. O'KONEK CONTINUING) All right. Christal, I just
17 have a couple of last questions. In addition to some of the
18 training you talked about earlier for forensic interviews, you
19 said you'd also received training on typical behavior and -- or
20 behavior that is common to child victims of sexual abuse?

11:38

21 A. Mm-hmm.

22 Q. What kind of -- can you just briefly describe what kind of
23 training you've received on that?

24 A. Ongoing -- or we go to ongoing trainings throughout the
25 year in San Diego and Washington D.C., and so forth. And when

11:39

1 we go to those trainings, we go to different sessions that are
2 specific to different things that relate to children who are
3 abused.

4 Q. And in addition to that, maybe going to trainings,
11:39 5 learning about this information, do you also gather information
6 based upon the -- I think you said 1,200 forensic interviews
7 that you have done?

8 A. Yes.

9 Q. So I want to talk about roughly seven different things,
11:39 10 and could you briefly talk to me a little bit about disclosure
11 for children who are abused, sexual abuse specifically? Is it
12 common for them to disclose right away, or is it also common
13 for them to disclose later in life?

14 A. It's -- it's more common for them to disclose later. We
11:39 15 rarely see kids who disclose right away.

16 Q. And why is that, in the course of your experience?

17 A. Well, a lot of it has to do with guilt or shame or fear.
18 It's -- you know, kids sometimes feel guilty for what happened.
19 They feel like they had some part in the -- in the abuse that
11:40 20 occurs. They're afraid people won't believe them. They're
21 also afraid of what it would do to their families, or, you
22 know, sometimes the -- usually the person -- the subject or the
23 alleged offender is somebody that the child knows and they do
24 generally care for them.

11:40 25 Q. And in your experience from your interviews and your

1 education and training, have you ever encountered times where
2 children are reluctant to talk about family members to
3 strangers?

4 A. That they -- they don't want to talk about family members
5 to strangers?

6 Q. Their family members to a stranger, like somebody like you
7 -- yourself?

8 A. Yes.

9 Q. And what about sex? Is that a topic that you find that
10 children have a hard time discussing to a stranger?

11 A. Yes, adults have trouble talking about that to strangers,
12 children probably much more so.

13 Q. And why is that?

14 A. It's -- that topic is very personal. It's personal for
15 everybody, and it can be shameful too depending on if it was an
16 unwanted sex act. That can be just very embarrassing for the
17 person or child to talk about.

18 Q. And I know you mentioned something earlier, sometimes it's
19 somebody they know. Is -- in your experience, is it common for
20 child sexual abuse victims to be molested by somebody that
21 they're close with?

22 A. Yes, it's -- it's usually somebody who has access to the
23 child and who the child and child's caregivers trust.

24 Q. And in terms of disclosures that children make, do -- in
25 your experience, do they make it all at once, or do they give

1 bits and pieces over time? Can you just kind of describe how
2 -- how children disclose sexual abuse?

3 A. It depends. A lot of times children will tend to tell
4 peers before they tell parents, and it does come in pieces
5 because -- because it is such a sensitive topic to talk about.
6 A lot of times children will only talk about what they -- what
7 they're asked about, so they often minimize what's happened to
8 them.

9 Q. And what do you mean by that, they only talk about what
10 they're asked about?

11 A. Well, I mean, if you think about talking about
12 embarrassing subject, you're going to talk about it as little
13 as possible, so your -- a child most likely is not going to go
14 and describe every detail of something that's happened to them,
15 especially if it's to a caregiver, and it's just very -- it's
16 very -- they can be very fearful of what could happen and very
17 ashamed of what happened.

18 Q. And is it common for child victims of sexual abuse to have
19 behavioral changes?

20 A. Yes.

21 Q. And what changes have you noted either -- or noticed
22 either through your interviews or your education and training?

23 A. Just through my experience, children react in many
24 different ways. You know, they -- they may be doing worse in
25 school. They might -- they might -- you know, loss of sleep,

1 bedwetting sometimes when the children are younger. They could
2 act out more. It's just -- it's a wide range of different
3 things that can -- that happens with them.

4 Q. And is that wide range of things kind of dependent on the
5 child and where they're living and with whom they're living?

6 A. Yes.

7 Q. And we were talking about potential inconsistencies. Is
8 it common to have inconsistencies when a child victim of sexual
9 abuse is telling the story multiple times?

10 A. Yes.

11 Q. And why is that?

12 A. Well, it depends on who the person -- who the child is
13 talking to. If you think about when you're describing an event
14 of -- event, you're going to tell -- talk about the event
15 differently to your best friend than you would if you were
16 telling your mother about it. It also depends on the questions
17 that are being asked, so it is very common for different things
18 to be said when they're asked to describe what happened to
19 them.

20 Q. And when children victims of sexual abuse are interviewed
21 or potentially might have to testify, do they always have an
22 emotional reaction or sometimes do they have another type of
23 reaction?

24 A. No, most children that I've interviewed do not have any --
25 not an emotional reaction.

1 Q. And do you know, is there any research, or in your
2 experience, why is that that children don't have an emotional
3 reaction at that time?

4 A. I think just in my experience, a lot of it has to do with
5 the child just minimizing what's happened to them, but it just
6 -- everybody is different. Everybody reacts to trauma in a
7 different manner.

8 Q. And what sort of coping strategies do child victims of
9 sexual abuse display?

10 A. Well, it depends. Minimize -- minimization of the abuse
11 is often something they do to cope, but it really depends on
12 the support that they have from their caregivers and family.
13 Some do well and don't really display those types of things,
14 but others -- some might overachieve. Some might use drugs or
15 alcohol, so it's really dependent on the case.

16 MR. BOLINSKE: Thank you. I have no further
17 questions, Your Honor.

18 THE COURT: Mr. Bolinske.

19 CROSS-EXAMINATION

20 BY MR. BOLINSKE:

21 Q. Is it fair to say that the point of your job is to try to
22 get to the truth of whatever happened?

23 A. Yeah, it's just gathering information, yes.

24 Q. Okay. And so let's talk about that a little bit.

25 Gathering information, is information brought to you or do you

1 go gather it?

2 A. I'm only gathering information through the interview.

3 Q. Okay. And so other investigators bring you stuff, and
4 then you ask the children questions about the stuff they bring
5 you, or is it more complicated than that?

6 A. No, it's not. It's -- I usually see a 960, a child abuse
7 report. And then from there I just follow the protocols for
8 the interview.

9 Q. Okay. So it's not your job to go out and interview other
10 people or gather witnesses or gather documents or things like
11 that.

12 A. No.

13 Q. Okay. People --

14 THE COURT: So you mentioned "960." You better tell
15 everybody what that is.

16 THE WITNESS: Oh, a 960 is a report of suspected
17 child abuse or neglect.

18 THE COURT: From a teacher or other person required
19 to report.

20 THE WITNESS: Yes. Yep, usually submitted by a
21 mandated reporter.

22 Q. (MR. BOLINSKE CONTINUING) Okay. And in your interview of
23 Sxxxxxx -- we just watched it -- she talks about hitting,
24 kicking, scratching, things like that. Were any records
25 brought to you, any medical records, any independent

1 verification that that occurred?

2 A. I wouldn't even ask for that, no.

3 Q. Okay. So somebody else would do that.

4 A. Yes.

11:47

5 Q. Okay. So somebody else would be better to ask about
6 records relating to injuries, things like that?

7 A. Yes.

8 Q. Okay. And I'd like to go back to Nxxxx's interview. You
9 were here when that was played, right, the first interview?

11:47

10 A. Yes.

11 Q. And was that the entire interview that you did? Are you
12 aware or not?

13 A. No, I'm aware it was redacted.

14 Q. Okay. So somebody took part of that interview out?

11:47

15 A. Yes.

16 Q. And do you remember what that part was or one of the parts
17 was?

18 A. No.

19 Q. Do you remember any -- do you remember anything in your
20 report about a conversation Sxxxxxx had with Nxxxx at a Boys
21 and Girls Club or something like that?

11:48

22 A. I remember something about that, yes.

23 Q. Okay. And other friends who may have been there at that
24 time?

11:48

25 A. I don't remember that.

1 Q. Okay.

2 A. I just don't recall that.

3 Q. If we played it, would that maybe refresh your memory?

4 A. Yep.

11:48

5 MR. BOLINSKE: Could we play just --

6 MR. O'KONEK: It would be Government's Exhibit 12.

7 (Government's Exhibit Number 12 was played in open
8 court.)

11:49

9 MR. O'KONEK: And just one moment. I think we're
10 having some technical difficulties. We were playing the
11 redacted interview, and now we're going to play Government's
12 Exhibit 12 that has the brief things we took out.

13 THE COURT: In its entirety, or what?

11:50

14 MR. O'KONEK: No, just the portions that they wanted,
15 but we were going off of the edited one, and now we've got
16 everything --

17 THE COURT: All right.

18 (Government's Exhibit 12 is played in open court.)

19 MR. BOLINSKE: Okay. Thank you.

11:51

20 Q. (MR. BOLINSKE CONTINUING) And so that was part of the
21 video that we didn't see the first time, right?

22 A. Yes.

23 Q. And in that video or that portion of the video we heard
24 the name Jada Appel, right?

11:52

25 A. Yes.

1 MR. BOLINSKE: Okay. Thanks. That's all I have.

2 THE COURT: Anything else?

3 MR. O'KONEK: The only thing I would do at this time,
4 Your Honor, is I'd approach with Government's Exhibit 10.

11:52 5 REDIRECT EXAMINATION

6 BY MR. O'KONEK:

7 Q. Approaching with Government's Exhibit 10, we talked about
8 a 960 report. Is this a 960 report I'm handing you?

9 A. Yes.

11:52 10 Q. Is that the 960 report regarding Sxxxxxx Hxxxxxx?

11 A. Yes.

12 Q. And is that a fair and accurate copy of how this case got
13 referred for you to do an interview?

14 A. Yes.

11:52 15 MR. O'KONEK: At this time, Your Honor, we'd request
16 Government's Exhibit 10 be admitted into evidence.

17 MR. BOLINSKE: No objection.

18 THE COURT: Exhibit 10 is received.

19 MR. O'KONEK: And I'd ask that you just read the
11:52 20 portion for the referral in that block section.

21 Permission to publish, Your Honor?

22 THE COURT: You may.

23 MR. O'KONEK: And can you just read that out loud for
24 us?

11:53 25 THE WITNESS: It states, "This therapist met with

11:53

1 Sxxxxxx for her initial appointment for therapeutic service and
2 was accompanied by her parents. Father reported that Sxxxxxx
3 had discussed sexual abuse by her uncle. No name was reported
4 to the -- no name was reported to this therapist. Father
5 reported that the incident had occurred five years ago."

6 MR. O'KONEK: Thank you. And I have no further
7 questions, Your Honor.

8 THE COURT: Anything else, Mr. Bolinske?

9 MR. BOLINSKE: No further questions.

11:53

10 THE COURT: All right. Thank you. You may step
11 down. You are excused.

12 THE WITNESS: Thank you.

13 THE COURT: And I think we'll -- well, do you have
14 another witness?

11:53

15 MR. O'KONEK: We have one more witness, I believe.

16 THE COURT: All right. So then we'll take our noon
17 break here rather than start with another witness five to
18 12:00. So, members of the jury, we'll recess until 1:15.
19 Please don't visit with anyone about this case over the noon
20 hour, and we'll see everyone back here at quarter after 1:00.

11:54

21 (The jury exits the courtroom.)

22 THE COURT: well, we are outside the presence of the
23 jury. I received a note that there -- somebody who had
24 testified said -- told the clerk's office that somebody else
25 that was going to testify has been in the courtroom, so I don't

11:54

11:55

1 -- I don't know who's going to testify. I don't know who came
2 into the courtroom, but if there's any witnesses here, that --
3 and counsel know them more than I, but if there's any persons
4 that are going to be testifying in this case, they are excluded
5 from the courtroom during the trial, and it's up to the
6 attorneys to make sure that that's taken care of.

7 MR. O'KONEK: Yes, Your Honor.

8 MR. BOLINSKE: I didn't see anyone.

9 MR. O'KONEK: Neither did I.

11:55

10 THE COURT: Anything else we can take care of here?

11 MR. O'KONEK: The only thing is just, we'll be
12 calling Shannon Hilfer just to introduce the recorded interview
13 of Mxxxx, but wanted to take that -- before we called her in
14 case the defense had any objections to the recorded interview.

11:55

15 MR. BOLINSKE: Say that -- what?

16 THE COURT: Say that again.

17 MR. O'KONEK: We're going to be calling Shannon
18 Hilfer. She was the one that interviewed Mxxxx Sxxxxxxxxx, and
19 we'd be introducing that video, and so in case the defense had
20 any objection, I wanted to raise it outside the presence of the
21 members.

11:55

22 MR. BOLINSKE: Your Honor, I have no objection.

23 THE COURT: And how long is the video?

24 MR. O'KONEK: Eighteen minutes, I think.

11:56

25 THE COURT: Okay. And then the government will be

1 resting after that?

2 MR. O'KONEK: Probably, yes.

3 THE COURT: All right. Anything else, counsel?

4 MR. O'KONEK: No, Your Honor.

11:56

5 MR. BOLINSKE: No.

6 THE COURT: All right. We'll see you back at 1:15
7 then.

8 (A lunch recess was taken from 11:56 a.m. to
9 1:16 p.m., the same day.)

11:56

10 (In open court with the defendant, counsel, and the
11 jury present.)

12 THE COURT: Welcome back. We are back on the record
13 in the case of *United States versus Lonnie Dale Spotted Bear*.
14 All parties and the defendant are present, along with the
15 entire jury. We'll continue with the government's case.

01:18

16 MR. O'KONEK: The United States would call Ms.
17 Shannon Hilfer.

18 SHANNON HILFER,
19 having been first duly sworn, was examined and testified as
20 follows:

01:18

21 DIRECT EXAMINATION

22 BY MR. O'KONEK:

23 Q. Ms. Hilfer, I know you just briefly stated your name, but
24 could you state your name -- your full name for the court?

01:19

25 A. Shannon Hilfer.

1 Q. Okay. And where do you currently work?

2 A. I work for the Dakota Children's Advocacy Center.

3 Q. And where is that located?

4 A. It's located at 200 East Main in Bismarck.

01:19 5 Q. And for how long have you worked there?

6 A. For 11 years.

7 Q. And what are -- what's your job title?

8 A. I'm a forensic interviewer.

01:19 9 Q. What are some of your responsibilities as a forensic
10 interviewer?

11 A. My main responsibility as a forensic interviewer is to
12 talk to kids about what happened to them when there have been
13 allegations of abuse.

01:19 14 Q. Now I want to back up just a little bit. You said you
15 worked for the Dakota Children's Advocacy Center. What -- what
16 is the purpose of the Dakota Children's Advocacy Center?

01:20 17 A. Advocacy centers kind of came about as a way to be more
18 child friendly when there are allegations of abuse. Prior to
19 children's advocacy centers, kids had to talk to multiple
20 professionals multiple times about what happened to them, and
21 when kids have been traumatized, that's not good for them.

01:20 22 So advocacy centers kind of developed to coordinate
23 that whole multidisciplinary response when there are
24 allegations so that the child can come to the advocacy center,
25 and any professional who has some vested interest in the case

1 participates that day at the advocacy center, so it's like one
2 interview, one time, one place with everybody present and
3 participating in that.

01:20 4 Q. And you mentioned multiple -- multidisciplinary function.
5 Can you describe that a little bit more?

01:21 6 A. Children's advocacy centers pull together a
7 multidisciplinary team, so the main kind of people we work with
8 are law enforcement, social services, medical professionals,
9 mental health professionals, advocacy people, prosecutors, and
10 then just our staff.

11 Q. Okay. And can you just -- we heard from Christal Halseth
12 a little bit, but can you describe in your own words briefly,
13 what is a forensic interview?

01:21 14 A. A forensic interview really is a structured
15 developmentally sensitive conversation with a child that is
16 meant to elicit information that will either corroborate or
17 refute allegations of abuse.

18 Q. Okay. I want to talk a little bit about your education.
19 Can you just give us just a brief summary of your education?

01:21 20 A. Sure. I have a Bachelor's degree in psychology and a
21 Master's degree in mental health counseling. And then I've had
22 an additional initial training in forensic interviewing of
23 children and five or six advanced trainings.

01:21 24 Q. Okay. And do you have to maintain any continuing
25 education requirements?

1 A. Yes.

2 Q. And how often do you have to participate in that?

3 A. For my mental health license there's a requirement for
4 continuing education credits every -- every two years, and then
5 as well as every year there's a -- there's a certain amount of
6 credits that are required for the forensic interview position.

7 Q. And when you -- you said you got your initial training and
8 it was how to do a forensic interview according to the correct
9 guidelines?

10 A. Correct.

11 Q. And what kind of guidelines are you -- are you using? Are
12 they accredited by any institution?

13 A. When we interview kids, we use a protocol from the
14 National Children's Advocacy Center.

15 Q. And how many forensic interviews would you say you've done
16 just by estimate?

17 A. I've probably done close to 2,300.

18 MR. O'KONEK: I'm approaching the witness with
19 Government's Exhibit 5.

20 Q. (MR. O'KONEK CONTINUING) Is this a copy of your
21 curriculum vitae?

22 A. Yes, it is.

23 Q. And weird question, but how do you know that?

24 A. I made it.

25 Q. Can you briefly take a look through it and tell me if that

1 is an accurate reflection or depiction of your curriculum
2 vitae?

3 A. It is.

01:23 4 MR. O'KONEK: Okay. At this time, Your Honor, we'd
5 request to move Government's Exhibit 5 into evidence.

6 MR. BOLINSKE: No objection.

7 THE COURT: Exhibit 5 is received.

01:23 8 Q. (MR. O'KONEK CONTINUING) All right. And I want to talk a
9 little bit more about the protocols that you earlier described
10 about forensic interviewers. Just briefly take us through a
11 general forensic interview from start to finish, kind of where
12 you start and how you end and kind of take us through that
13 process.

01:23 14 A. Okay. If you watch a number of forensic interviews,
15 they'll all look very similar. They kind of have that same
16 protocolled structure to them. Usually it starts with the
17 interviewer introducing themselves, kind of giving a very brief
18 explanation of their role, talking about that there is
19 recording equipment in the room, because we do tell the kids
01:23 20 that they're being recorded.

01:24 21 Then we do some basic just guidelines for the
22 conversation with kids because it's a very different
23 conversation than they're used to having with adults. So we
24 tell them it's okay to say "I don't know" if they don't know,
25 that we don't want them to guess at things, that it's okay to

01:24

1 tell us if we're using words they don't know or if they don't
2 understand what we're asking, that it's okay to correct me if
3 I'm getting something wrong, because I want to make sure I'm
4 understanding what they're saying, and that we only talk about
5 things that are true, so we kind of go through those.

01:24

6 There's a brief like rapport-building stage just kind
7 of to get them comfortable in the room. It gives me a chance
8 to kind of get to know them a little bit, listen to how they
9 talk. You know, do they answer questions with one word or two
10 paragraphs, where they're at developmentally. All of those
11 kind of things I can kind of glean just from that neutral
12 conversation.

01:24

13 Then there's a transition question, just do they know
14 why they're there to talk today. There's a chance for them to
15 talk about what happened or not talk about what happened. And
16 then it's just usually just reverting very briefly back to a
17 neutral topic.

01:25

18 Q. Okay. And when you go through this forensic interview, do
19 you ask open-ended questions?

20 A. Yes.

21 Q. Is that part of your protocol and guidelines?

01:25

22 A. Yes, the gold standard is to ask the open-ended questions,
23 the tell me about what happened, what happened next, tell me
24 more about that kind of question, and then follow up with like
25 who, what, when, where kind of question, and kids will answer

1 just according to where they are developmentally.

2 Q. And are you also trying to avoid influence or
3 subjectivity?

4 A. Yes.

01:25

5 Q. Now, we talked about a general forensic interview, but I
6 want to talk a little bit about where your building is located.
7 You kind of gave us the address, but is it all one building?
8 Is that the whole advocacy center, or is it part of a building
9 or something else?

01:25

10 A. No, we're on the third floor of that building, so we have
11 the entire floor of it. It's just like an office building on
12 the corner of Main.

13 Q. Okay. So how does your office get referrals about child
14 abuse or child sexual abuse?

01:25

15 A. For forensic interviews and for forensic medical exams, we
16 take referrals from law enforcement, social services,
17 prosecutors, so there has to be some kind of open investigation
18 for that. For the advocacy, mental health services, those kind
19 of things can be referred by any person or professional in the
20 community.

01:26

21 Q. So when somebody -- a child is brought in to be part of a
22 forensic interview, take us through how the child ends up
23 actually in the room to get the interview. Take us through the
24 steps that happen from when the child or guardian enter the
25 building to when the child ends up in the room with you.

01:26

01:26

1 A. When they come through the front door, they're greeted by
2 our receptionist, who kind of checks them in. And then from
3 that point an advocate will engage with them, make sure they
4 have like water, juice, snack, that they're comfortable, things
5 like that.

01:27

6 There's a brief meeting of the professionals that are
7 there, and then the advocate will take the family back and show
8 them that -- the room that they're going to be in and just kind
9 of explain the room, answer any questions they have.

10 Then we get parents to sign paperwork, answer
11 questions before we get started for them. Then we talk to the
12 child. And then we meet briefly again with parents at the end,
13 before we say good-bye to the kids.

01:27

14 Q. And the parents or guardians aren't in the room when you
15 speak with the child about the interview.

16 A. No, parents do not observe the interview. While -- while
17 we're interviewing the child, the parents are meeting with that
18 advocate just for support, referrals for services, that kind of
19 stuff.

01:27

20 Q. And are your interviews -- you child forensic interviews
21 recorded?

22 A. Yes.

23 Q. Video recorded, I should say?

24 A. Yes.

01:27

25 Q. And how are they recorded? What kind of software device?

1 A. They are recorded onto -- we have a system called v2, and
2 it just -- it will record the interview onto a hard drive, and
3 then it's burned onto a DVD.

01:27

4 Q. Okay. And just kind of the cut to the chase, you did a
5 forensic interview of Mxxxx Sxxxxxxxxx on January 9th of 2017?

6 A. Yes.

7 Q. And we talked about some of the guidelines and protocols.
8 You followed those guidelines and protocols during that
9 interview?

01:28

10 A. Yes.

11 Q. And when you met with Ms. Sanderson, did she know that the
12 interview would be recorded?

13 A. Yes.

14 Q. And have you had a chance to review the recording?

01:28

15 A. Yes.

16 MR. O'KONEK: Okay. May I approach, Your Honor?

17 THE COURT: You may.

18 MR. O'KONEK: I'm handing the witness Government's
19 Exhibit 9.

01:28

20 Q. (MR. O'KONEK CONTINUING) Now, is this the forensic
21 interview that you had conducted with Mxxxx Sxxxxxxxxx?

22 A. Yes.

23 Q. And you've reviewed that because your initials and the
24 date that you reviewed is included on the sleeve of that CD?

01:28

25 A. Correct.

1 Q. And there's been some edits for various reasons, for times
2 and things like that.

3 A. Correct.

4 MR. O'KONEK: Okay. Thank you. At this time we
5 would move Government's Exhibit 9 into evidence.

6 MR. BOLINSKE: No objection.

7 THE COURT: Exhibit 9 is received.

8 MR. O'KONEK: Permission to publish?

9 THE COURT: You may. And it's how long?

10 MR. O'KONEK: Eighteen minutes, Your Honor.

11 THE COURT: All right.

12 (Government's Exhibit 9 is played in open court.)

13 MR. O'KONEK: And I have no further questions, Your
14 Honor.

15 THE COURT: Mr. Bolinske.

16 MR. BOLINSKE: I just have a couple.

17 CROSS-EXAMINATION

18 BY MR. BOLINSKE:

19 Q. Ms. Hilfer, you wrote a report as a result of this
20 forensic interview, is that right?

21 A. Correct.

22 Q. And in that report you include some background information
23 of people you talked to and things like that?

24 A. A brief paragraph on the first page, is that what you're
25 referring to? Yes.

1 Q. Kind of, yeah. And have you reviewed that report recently
2 in order to come testify here today?

3 A. Yes.

4 Q. And do you have that report with you?

5 A. No.

6 Q. Okay. Do you remember part of that report -- or when you
7 did this interview, when asked how this came out or how Mxxxx
8 -- this came out now, that Sxxxxxx's dad had called Mxxxx's
9 mother and said something had happened to her, and Travis

10 needed to strengthen his case for Sxxxxxx. Do you remember
11 that?

12 A. Yes.

13 Q. Okay. And that's in your report, right?

14 A. Correct.

15 MR. BOLINSKE: Okay. Thank you. That's all I have.

16 THE COURT: Anything else?

17 MR. O'KONEK: No.

18 THE COURT: All right. Thank you. You may step
19 down. You are excused.

20 THE WITNESS: Thank you.

21 MR. O'KONEK: United States rests.

22 THE COURT: Very well. Members of the jury, the
23 government has rested its case, which means you've heard all of
24 the evidence that they intend to present here. There's some
25 legal matters, legal issues that I need to take up with the

1 attorneys, so we're going to take about a 20-minute break.
2 That's a little earlier than usual, but it's probably going to
3 take us that long to take care of some of these preliminary
4 matters. So don't visit amongst yourselves during this break,
01:49 5 and if it's -- if we get things done quicker than that, I'll
6 bring you back in the courtroom sooner than 20 minutes from
7 now.

8 (The jury exits the courtroom.)

9 THE COURT: We're back on the record outside the
01:50 10 presence of the jury. At this time I'll take care of any
11 Rule 29 motions for judgment of acquittal that need to be made.

12 MR. BOLINSKE: Make the standard motion for judgment
13 of acquittal.

14 MR. O'KONEK: Your Honor, for all the counts, I
01:50 15 believe first we've stipulated to Indian country and Native
16 American status, so we don't need to address that any further.

17 But in each one of the counts the respective girls --
18 in Count 1, Sxxxxxx came in, testified that the defendant
19 licked her vagina. There was also the recorded interview where
01:51 20 she stated the same thing. In both her testimony and recorded
21 interview she said she was -- I think in testimony it was five
22 or six, but in the interview it was six, so she was under the
23 age of 12.

24 Count 2, Nxxxx came in here and testified, said that
01:51 25 the defendant licked her -- licked her vagina when she was

01:51

1 four. The interview we introduced, she had said it was five,
2 but both in her in-court testimony and her interview she stated
3 that she was under 12 and that the defendant had licked her
4 vagina by, in the video, identifying the area of the crotch
5 that she circled, I believe, which is Government 7.

01:52

6 For Count 3, in both her testimony and the forensic
7 interview, Nxxxx stated that the defendant pulled down her
8 pants and essentially she was afraid he might lick her vagina
9 again, but her hands were holding up her pants while her
10 underwear were still on. It demonstrates his attempt was to --
11 that was a substantial step to attempt to touch her vaginal
12 area again.

01:52

13 And then for Count 4 for Mxxxx Sxxxxxxxx, she came in
14 here today, stated that the defendant touched her vagina over
15 the clothing while she was wearing basketball shorts, and the
16 same thing was presented -- as far as her forensic interview,
17 she stated the same thing, and at the time she said she was
18 seven, so under the age of 12.

01:52

19 THE COURT: Mr. Bolinske, anything else you wish to
20 say?

21 MR. BOLINSKE: No argument, Your Honor, no.

22 THE COURT: All right. Well, it's the Court's
23 finding in this case that there has been sufficient evidence to
24 sustain a verdict on all counts.

01:52

25 As to Count 1, the testimony of Sxxxxxx Hxxxxx proved

1 up all of the essential elements of the crime, along with the
2 stipulation as to Native American status. Sxxxxxx Hxxxxx's
3 testimony was further corroborated by the forensic interview,
4 which is Exhibit 8.

01:53

5 As to Count 2 and Count 3, that was all addressed
6 through the testimony of Nxxxx Hxxxxxx Exxxx, and her testimony
7 alone established the essential elements of the -- of each of
8 those offenses, along with the stipulation as to Native
9 American status. Ms. Eagle's testimony was corroborated by the
10 forensic interview, which is -- and diagram, which are
11 Exhibits 6 and 7.

01:53

12 And as to Count 3 (sic), the testimony of Mxxxx
13 Sxxxxxxxx, along with the stipulation previously mentioned,
14 established all of the essential elements of that count, and
15 her testimony was confirmed, corroborated by the forensic
16 interview, which is Exhibit 9.

01:54

17 The Eighth Circuit Court of Appeals has made it very
18 clear that the testimony of an alleged victim in and of itself
19 can be all the evidence that's needed to sustain a verdict on
20 these types of charges. And the Court -- the Appellate Court
21 has also made it clear that issues of credibility of witnesses
22 are issues that a jury is to resolve, not a judge.

01:54

23 So there's been certainly sufficient evidence to
24 sustain a verdict as to all four counts. The Rule 29 motion is
25 noted for the record and denied.

01:54

1 Mr. Bolinske, what do you intend to present?

2 MR. BOLINSKE: I have, I think, six witnesses, Your
3 Honor.

4 THE COURT: Okay.

01:54

5 MR. BOLINSKE: And we can start right away here, I
6 mean, whenever we get back.

7 THE COURT: When did we leave here, five minutes ago?

8 MR. BOLINSKE: I think so.

01:55

9 THE COURT: Well, we'll give them a 15-minute break
10 rather than a 20-minute break, so we'll come back at five after
11 2:00. But you're ready to go with witnesses at that time?

12 MR. BOLINSKE: Yep, we are.

13 THE COURT: And can you tell us who those are?

01:55

14 MR. BOLINSKE: Well, potentially Bruce Bennett,
15 Sommer Cummings, Kelly McGrady, Jerry Schneider, Jada Appel,
16 and Lonnie Spotted Bear.

17 THE COURT: Okay. And do you expect that you'll
18 complete all of that today or not?

19 MR. BOLINSKE: It's certainly possible.

01:55

20 THE COURT: Okay.

21 MR. BOLINSKE: They're not going to be long.

22 THE COURT: Anything else we can take care of?

01:55

23 MR. O'KONEK: The only other thing is I think the
24 final instructions were e-mailed out. I had e-mailed a
25 response with just two requested changes or additions, so other

1 than that, we don't have any other objections to the final
2 instructions.

3 THE COURT: Or the verdict form?

4 MR. O'KONEK: Or the verdict form, that's correct.

01:55

5 THE COURT: Mr. Bolinske, have you had time to review
6 those pleadings?

7 MR. BOLINSKE: I'd like to look at them again, but --

8 THE COURT: Yeah, that's fine. All right. We'll see
9 you back in about ten minutes.

01:56

10 (A recess was taken from 1:56 p.m. to 2:08 p.m., the
11 same day.)

12 (In open court with the defendant, counsel, and the
13 jury present.)

14 THE COURT: Welcome back. We are back on the record.
15 Mr. Bolinske.

02:08

16 MR. BOLINSKE: Your Honor, the defense would call
17 Agent Bruce Bennett.

18 SPECIAL AGENT BRUCE BENNETT,
19 having been first duly sworn, was examined and testified as
20 follows:

02:08

21 DIRECT EXAMINATION

22 BY MR. BOLINSKE:

23 Q. would you just tell us your name, please, sir?

24 A. Bruce Bennett.

02:09

25 Q. And what is your occupation?

1 A. I'm a special agent with the FBI.

2 Q. And is this a little odd, me call you to the witness stand
3 and the government not calling you?

4 A. Is it?

02:09

5 Q. A little odd?

6 A. Yes.

7 Q. Okay. And were you the lead investigator in this case?

8 A. Yes.

02:09

9 Q. And how long a time period did you work on this case, if
10 you can -- your best estimate?

11 A. From the initial disclosure until now --

12 Q. Okay. Do you know --

13 A. -- which would be --

14 Q. Sorry.

02:09

15 A. -- February of 2016, I believe.

16 Q. Okay. And how come you didn't testify for the government?

17 A. I have no idea.

18 Q. Did you discuss why you weren't called?

19 A. No, I didn't.

02:09

20 Q. Is this a rare occasion, that you're not called as a lead
21 investigator?

22 A. It is a rare occasion, yes.

23 Q. Okay. And describe the types of things you do as an
24 investigator to do a thorough job. Describe your training and
25 experience, if you would?

02:10

1 A. My training, of course, the FBI academy. Prior to that I
2 was in the Marine Corps, a Los Angeles County Sheriff's deputy.
3 I've been with the FBI now for almost 18 years.

02:10

4 Q. Okay. And this is an obvious question, but you want to do
5 a thorough job when you investigate cases, right?

6 A. Yes.

7 Q. And getting to the truth is or should be a priority, true?

8 A. Yes.

02:10

9 Q. And in doing that as an investigator, is it fair you get
10 information, then you follow leads that that information
11 provides?

12 A. Yes.

13 Q. And the process is to hopefully arrive at what actually
14 happened, right?

02:11

15 A. Yes.

16 Q. And you reviewed all the materials then in this case. Did
17 you then gather the materials, review them, things like that?

18 A. Yes.

19 Q. Did interviews? You did interviews?

02:11

20 A. Yes.

21 Q. And in these interviews, there are three accusers here,
22 right?

23 A. Correct.

24 Q. And you sat here during the whole trial, right?

02:11

25 A. Yes.

1 Q. And did the versions of events continue to change
2 throughout this trial that they claimed?

3 A. There are what we would consider to be minor
4 inconsistencies, but the actual main version of events did not
5 change, in my opinion.

02:11

6 Q. Okay. And so you were here. You know who Nxxxx is,
7 correct?

8 A. Yes.

9 Q. And you were here when she testified?

02:12

10 A. Yes.

11 Q. And you were here when a CD was played in her case, right?

12 A. Yes.

13 Q. And part of that CD was redacted, wasn't it?

14 A. Yes.

02:12

15 Q. And part of the redaction that we played later -- that I
16 played later contained a conversation Sxxxxxx had with Nxxxx,
17 right?

18 A. Yes.

19 Q. And where did that occur, if you remember?

02:12

20 A. At a Boys and Girls Club.

21 Q. And did it involve any other people that were at this Boys
22 and Girls Club, if you remember?

23 A. I believe Jada Appel.

24 Q. And to get to the truth in cases of this type, is
25 credibility important?

02:12

1 A. Yes.

2 Q. Is consistency important?

3 A. Yes.

02:12 4 Q. Are the surrounding cast, say friends, teachers, relatives
5 of the people saying these accusations, what they have to say,
6 is that important?

7 A. To a certain degree, yes.

8 Q. Okay. And you had Jada Appel's name, didn't you?

9 A. Yes, I did.

02:13 10 Q. And did you ever go and talk to her?

11 A. No.

12 Q. And she was one of Sxxxxxx's good friends, right?

13 A. I did not know her to be a good friend. I knew that she
14 was mentioned.

02:13 15 Q. And was she one of Nxxxx's friends?

16 A. I don't know.

17 Q. In the DVD that was played, they were in kind of a group
18 talking about things, right?

19 A. Yes, but I don't know that she was friends with Nxxxx.

02:13 20 Q. Okay. You never found that out?

21 A. No, I did not.

22 Q. Did you try to find that out?

23 A. No.

02:13 24 Q. Okay. Who of Nxxxx's friends -- or I'll back up -- of
25 Sxxxxxx's friends did you talk to about her potential

1 truthfulness or lack of truthfulness?

2 A. None.

3 Q. Who of Nxxxx's friends did you talk to about their
4 truthfulness or lack of truthfulness?

02:13 5 A. None.

6 Q. Who of Mxxxx's friends did you talk to about their
7 truthfulness or lack of truthfulness?

8 A. None.

9 Q. Do you think that may have been important?

02:14 10 A. No.

11 Q. You don't think that could be important.

12 A. No. There are four counts charged in this case, and none
13 of these people were present when the subject did what he did
14 to our victims.

02:14 15 Q. Okay.

16 A. So they did not have what we would call direct evidence of
17 what happened. It was done in private. So for me to go out
18 to, say, a seventh grade class and say, "Who here is friends
19 with Nxxxx, please raise your hands," it's just not something
02:14 20 that I'm going to do to detect or learn the credibility of one
21 of my victims. I would not do that in, say, a -- if somebody
22 was a victim of a robbery, I would not go and get a list of our
23 victim's friends and go ask them, "Is this person truthful?"
24 It's just not something that we do.

02:15 25 Q. If someone accused you of something, would you like that

1 person's credibility explored?

2 A. The person doing the accusing?

3 Q. Of you.

4 A. Yes.

02:15

5 Q. And you just testified you didn't do that in this case
6 when somebody accused someone else of something wrong, right?

7 A. I'm sorry?

8 Q. If someone accused you of horrible, terrible things, would
9 you like that person's credibility explored or propensity for

02:15

10 truthfulness?

11 A. If the subject was accusing me of something?

12 Q. Right.

13 A. Yes, I would. I'd want the subject's credibility
14 ascertained.

02:15

15 Q. Okay. Thank you. And in Sxxxxxx's interview, are you
16 aware -- or you're familiar with the forensic interviews in
17 this case?

18 A. Yes.

19 Q. Have you reviewed them recently or reviewed them at all?

02:15

20 A. I watched them today.

21 Q. Okay. And in Sxxxxxx's interview, she talks about
22 hitting, kicking, and scratching Mr. Spotted Bear. Do you
23 remember that?

24 A. Yes.

02:16

25 Q. And as part of an investigation to be thorough, you

1 probably would interview people surrounding incidents like that
2 to see if there are witnesses who can corroborate that story,
3 right?

4 A. I was told that there were no witnesses.

02:16

5 Q. Did you go look for any?

6 A. Other than the two that were there, no.

7 Q. How about -- did you go check on any medical records of
8 Lonnie Spotted Bear to see if he'd gone to the doctor for being
9 hit, kicked or scratched?

02:16

10 A. From five or six years ago, no.

11 Q. You didn't -- you didn't check, though?

12 A. No.

13 Q. Did you talk to anyone around that timeframe that may have
14 seen Lonnie with black-and-blue marks, scratches, cuts,
15 anything of that nature?

02:16

16 A. I was not told that he had black-and-blue marks, cuts. He
17 had a scratch.

18 Q. Okay. Might that be important to determine if somebody --
19 boy, they saw a scratch. This corroborates her story. Might
20 that be important?

02:17

21 A. There's also the problem with cooperation. We attempted
22 to talk to people closer to Mr. Spotted Bear, but we did not
23 get their cooperation.

24 Q. Okay. And let's go to Nxxxx's interview. Some of this
25 involved a tractor tire, something like that?

02:17

1 A. Yes.

2 Q. And did you go out and -- do you have any pictures of a
3 tractor tire?

4 A. No.

02:17

5 Q. Do you have any pictures of the shop?

6 A. No.

7 Q. Do you have any pictures of anything related to the scene
8 where this allegedly occurred?

9 A. No.

02:17

10 Q. And do you know if that shop is still there?

11 A. No, I don't.

12 Q. You haven't checked?

13 A. I saw a shop there when I was out there near the property,
14 but I did not have permission to go on the property.

02:18

15 Q. Okay. Could you have gotten permission?

16 A. I do not believe I could have gotten a search warrant,
17 which would have been required.

18 Q. You couldn't have gotten a search warrant in a crime like
19 this?

02:18

20 A. I doubt that I would have been able to, to go out --

21 Q. Why is that?

22 A. Because I have no idea of the -- first of all, the
23 staleness issue. This happened three years ago. I have no
24 idea to go in front of a judge and swear that I had reason to
02:18 25 believe that that tire is still there.

1 Q. Okay. But you didn't try.

2 A. No.

3 Q. Okay. And do you remember Nxxxx talking about a cell
4 phone that she had purportedly on her person when this
02:18 5 occurred?

6 A. Yes.

7 Q. And did you attempt to get the cellphone records from
8 Nxxxx's cell phone from that time?

9 A. I believe I looked into that, yes.

02:18 10 Q. Okay. Did you find any?

11 A. First, I have to have the telephone number and the
12 subscriber information, and I believe she had a different phone
13 or had a couple of different phones since that time, so I was
14 unable to get subscriber records. And on top of that, all that
02:19 15 would have shown would be that she had contact with her
16 grandfather, who she had frequent contact with anyway.

17 Q. Do you --

18 A. So I understand people believe that the FBI can just ask
19 for phone records, and that's not accurate.

02:19 20 Q. Did you try to trace back which phone or phone number this
21 might have been through, you know, Verizon, AT&T, records like
22 that?

23 A. No.

24 Q. And the phone call was purportedly made to somebody by the
02:19 25 name of David Holding Eagle, is that right?

1 A. Yes.

2 Q. And he had a phone then too, right?

3 A. Yes.

4 Q. Did you look at his phone or try to get his phone?

02:20

5 A. No.

6 Q. Did you try to get records from his phone?

7 A. No.

8 Q. Would it have been possible to get records from his phone?

02:20

9 A. It could have been possible, but again, the same -- the
10 same thing.

11 Q. And that potentially would have or could have corroborated
12 her version of calling to get a ride home or calling because
13 there was some sort of an emergency, right?

02:20

14 A. It would have shown that she had contact with her
15 grandfather, and that's -- that's it, which she had frequent
16 contact with him anyway, so --

17 Q. And did you talk to David Holding Eagle?

18 A. No.

19 Q. You never did speak with him?

02:20

20 A. No.

21 Q. You didn't interview him about this?

22 A. No.

23 Q. You didn't think that was important?

24 A. No.

02:20

25 Q. To corroborate a story of something this bad?

02:21 1 A. If it was to corroborate if he would have been present at
2 the time that Mr. Spotted Bear did what he did, absolutely, I
3 would talk to him. However, to talk to him and say, "Do you
4 remember receiving a phone call from your granddaughter three
5 years ago" --

6 Q. Might he have --

7 A. -- it doesn't seem reasonable.

8 Q. If he's got to get -- all right. I'll back up. You
9 watched Nxxxx's video. You were here, right?

02:21 10 A. Yes.

11 Q. And initially do you remember Nxxxx saying that David
12 Holding Eagle came and picked her up on a motorcycle?

13 A. Yes.

14 Q. And then she said later that he got in his car and came
02:21 15 and picked her up?

16 A. I believe so.

17 Q. And did you explore that with Mr. Holding Eagle?

18 A. No.

19 Q. Just these details, you could have corroborated and just
02:21 20 put a little more solidity to this, but you chose not to, is
21 that right?

22 A. Correct.

23 Q. Okay. With Nxxxx again, you wrote reports or generated
24 reports in this case, right?

02:21 25 A. Yes.

1 Q. And in lots of cases, and particularly in this case,
2 information kept coming in and kept changing as to what
3 happened, right?

4 A. The main idea of what happened did not change, but other
5 information did come in.

6 Q. Okay. And you were here when Ivetta Spotted Bear
7 testified?

8 A. Yes.

9 Q. And do you recall her saying that she really didn't talk
10 to Nxxxx about this and didn't talk details and -- you know, do
11 you remember that?

12 A. Yes.

13 Q. And on March 30, 2017, you wrote a report in which Ivetta
14 Spotted Bear contacted you on the phone. Does that sound
15 right?

16 A. Yes.

17 Q. And in that phone call, what did she tell you if you
18 remember?

19 A. If it's the report that I believe you're referring to, she
20 said that Nxxxx had come to the U.S. Attorney's Office, and
21 when she returned, she was very upset, that she said that she
22 had not been completely truthful, that there were eight to ten
23 other times that this had happened, and I believe that was the
24 -- most of it.

25 Q. Okay. And that hadn't previously been disclosed to

1 anyone, had it?

2 A. No.

3 Q. And she'd given a forensic interview and had an
4 opportunity to tell her story, right?

02:23

5 A. Yes.

6 Q. And been asked if she was being truthful?

7 A. Yes.

8 Q. Several times?

9 A. Yes.

02:23

10 Q. By several people?

11 A. Correct.

12 Q. Including you?

13 A. I'm not sure that I've ever asked her that.

14 Q. Okay. And did you then explore these approximately eight
15 to ten other times that she brought up?

02:23

16 A. We did bring her in again and talked to her, and that is
17 when she disclosed that she was touched multiple times while
18 driving the truck, and we asked her what it was about. And we
19 can't use leading questions. She did not disclose to us the
20 details of the eight to ten other times that he did it because
21 she did not want to go into details about any of this and
22 she -- she said that she only wanted to say the first time and
23 the last time.

02:24

24 Q. Okay. And could you have tried to corroborate that if you
25 wanted to?

02:24

1 A. If I had more information, yes.

2 Q. And you could've gotten more information, right?

3 A. If it exists, yes.

4 Q. You could have explored it? You could have looked into
5 it?

6 A. That's what we did when we interviewed her.

7 Q. Okay. But did you then go out and re-interview witnesses
8 to see if anyone recalled anything about these new events?

9 A. Re-interview witnesses?

10 Q. Right.

11 A. To what?

12 Q. To see if they knew anything about other incidents, dates,
13 times, places, you know?

14 A. But they would have to be a witness to something that
15 happened in private.

16 Q. How about anyone who suspected anything? Did you go out
17 and interview family members? Hey, do you suspect Lonnie is
18 doing anything? Did you try that?

19 A. Yes.

20 Q. Okay. And how did that turn out?

21 A. And we did not get cooperation.

22 Q. Okay. And, in fact, people told you that, no, we don't
23 think he -- he's not a guy like this, right?

24 A. The people that I spoke to, yes.

25 Q. And did you write reports that indicated that?

1 A. No, I did not do an interview of these people. I asked
2 for their cooperation to speak with me and to let me speak to
3 certain members of the family.

02:25 4 Q. Okay. Do you remember who you -- did you talk to them on
5 the phone or in person, or how did that work?

6 A. Almost very soon after the girls had disclosed we went out
7 to -- I believe it was Twin Buttes and spoke to Sommer Cummings
8 and Morley Spotted Bear, I believe is his last name.

9 Q. So you did speak with Sommer?

02:26 10 A. Yes.

11 Q. And you did speak with Morley?

12 A. Yes.

13 Q. And they provided information to you that was helpful to
14 Mr. Spotted Bear, right?

02:26 15 A. You may say that they -- I did not do an interview of
16 them, but they said that they would not let us talk to their
17 children because they did not believe that he did it.

18 Q. Okay. You may have -- not have done an interview, but you
19 got information from them, right?

02:26 20 A. Yes.

21 Q. And it was helpful to Mr. Spotted Bear, right?

22 A. It was their opinion, yes.

23 Q. And you did not write a report about that.

24 A. I did not write reports about opinion.

02:27 25 Q. Okay. But you got information that was helpful to him,

1 and that's written nowhere, is it?

2 A. No.

3 MR. BOLINSKE: Thank you, sir. That's all I have.

4 THE COURT: Mr. O'Konek, any questions?

5 MR. O'KONEK: Briefly. Your Honor.

6 CROSS-EXAMINATION

7 BY MR. O'KONEK:

8 Q. Now, throughout the time that you've been the
9 investigator -- I started after this investigation had
10 happened, is that right?

11 A. Yes.

12 Q. But since you've been the case agent and I've been at the
13 U.S. Attorney's Office, we've talked about your potential
14 testimony kind of throughout the investigation, right?

15 A. Yes.

16 Q. And when it comes to calling witnesses, that's my
17 decision, not yours.

18 A. Correct.

19 Q. Okay.

20 A. And as far as had we discussed, we have discussed me --
21 whether I would be testifying or not, but we did -- in answer
22 to the first question, I was not provided the answer why.

23 Q. So I want to talk a little bit about your investigation.
24 When you were looking into -- after you got the disclosures
25 from Sxxxxxx and Nxxxx, was there anybody else that either of

1 those girls said was in the room when Lonnie touched them?

2 A. No.

3 Q. What about Mxxxx, when that came up? Anybody disclose
4 somebody -- Lonnie was -- or somebody else was in the room
5 watching Lonnie do this?

6 A. No.

7 Q. And part of the -- part of the rationale for redacting
8 part of the statement was to keep certain other victims out in
9 the event that those victims had trouble testifying.

10 A. Correct.

11 Q. And in order to essentially not prejudice the accused.

12 A. Correct.

13 Q. Now, in terms of Jada Appel, do you think you should have
14 interviewed her?

15 A. In hindsight, yes.

16 Q. Okay. But ultimately what would that have required for
17 you to go and speak with a classmate? Do you often go to
18 schools and talk with victim's classmates about sexual assault
19 allegations?

20 A. In 18 years I've never done it.

21 Q. Why not?

22 A. Why?

23 Q. Yeah. Why wouldn't you do that?

24 A. As an FBI agent I'm supposed to have the child witness's
25 parents' permission, so I can't just go to a school and drag a

1 child out of the class and interview them.

2 Q. And Twin Buttes or New Town, those are small towns?

3 A. Yes.

4 Q. Does word spread fast when you start talking with people?

5 A. Yes.

6 Q. Is that something that you've seen in your experience?

7 A. Particularly in this investigation it was -- it was
8 tearing the family apart, and I have to take into consideration
9 the privacy of not only Mr. Spotted Bear, but also of our

10 victims in this case. If I go and I ask one child a question
11 of the nature that I have to ask, it's going to -- it's going
12 to spread around the school. And I've seen how the kids are
13 ostracized and tormented by each other, and that's just not --
14 it's not something I want to put them through.

15 Q. And sometimes when you give information to people about
16 the case, does that lead to rumors spreading as well?

17 A. Yes.

18 Q. Have you seen that in your 18 years?

19 A. Absolutely.

20 Q. So we talked a little bit on -- I think on direct
21 examination the defense counsel had asked who -- about people
22 you interviewed. Who did you try to speak with who was
23 uncooperative?

24 A. Well, I spoke with the parents, Sommer Cummings and Morley
25 Spotted Bear.

1 Q. And they're the parents of who?

2 A. Of Haylon and Ashley (sic).

3 Q. Okay. And just take us through, what was their demeanor
4 like when you spoke with them?

02:30

5 A. They were inevitably -- or eventually they were
6 uncooperative and did not let us. Initially I wanted to speak
7 to Ashley, and then after that I wanted to speak to Haylon.
8 I'm not sure if we discussed Haylon at that time, but we wanted
9 in particular to speak to Ashley. They're nice, cordial, good
10 people, but ultimately they did not want to let us talk to the
11 kids.

02:31

12 Q. And what was Sommer's relationship with Mr. Spotted Bear?

13 A. She's -- I believe she's married to his -- one of his
14 sons.

02:31

15 Q. Okay. Now, we talked about -- they talked about going out
16 and trying to get photographs. Now, could you get photographs
17 of Lonnie Spotted Bear's home?

18 A. No.

19 Q. Why not?

02:31

20 A. It burned down.

21 Q. And the shop that you went there that -- the workshop that
22 you went to -- you talked a little bit about staleness. What
23 does that mean when you're trying to do a search warrant?

02:32

24 A. Well, first, I did not go to his shop. I did not go onto
25 his property.

1 Q. And why didn't you go onto his property?

2 A. Because I did not have permission to be there --

3 Q. Okay. And --

4 A. -- on his property. I was on a public road.

02:32

5 Q. And it might be illegal to go on private property without
6 permission.

7 A. Correct.

02:32

8 Q. So take us through -- you mentioned something about
9 staleness. What does that mean when you're trying to go to a
10 judge for a search warrant?

02:32

11 A. Meaning that I have to show that the items that I am
12 searching for, I can describe with particularity and that they
13 are currently located at the place that I want to search. And
14 if, for example, there's an item in the machine shed, I need to
15 be able to explain why I think that tire may still be there,
16 because it was -- it's been three years -- two or three years.

02:32

17 Q. Okay. And I just want to give you an example. So, for
18 instance, if you had suspected that somebody was dealing drugs
19 out of a house here in Bismarck and you had information that
20 they would -- a supply had come in 30 days prior, could you go
21 -- would you go and try to get a search warrant?

22 A. No.

23 Q. Why not?

02:33

24 A. Because it's 30 days. I have -- I would have to
25 articulate what reason I had that those drugs were still where

1 they were initially thought to be.

2 Q. And in these types of cases, when you get a delayed
3 report, oftentimes information -- or, excuse me, where things
4 are can change, can't they?

02:33

5 A. Yes.

6 Q. Now, the last thing I want to go over is, we talked about
7 Jada Appel. Now, ultimately Jada Appel was not in the room
8 with either Sxxxxxx or Nxxxx when Lonnie touched them?

9 A. No.

02:33

10 Q. And in terms of anybody else that was involved or a part
11 of the family or anybody else in this case, were you able to
12 identify anybody else that had correct knowledge, that was an
13 eyewitness to any of the abuse?

14 A. No.

02:33

15 Q. And if you would have found one, would you have talked
16 with them?

17 A. Absolutely.

18 MR. O'KONEK: No further questions.

19 THE COURT: Anything else?

02:34

20 MR. BOLINSKE: I have nothing further.

21 THE COURT: All right. Thank you, sir. You may step
22 down.

23 You may call your next witness.

24 MR. BOLINSKE: I'd call Sommer Cummings, Your Honor.

25 ///

1 SOMMER CUMMINGS,

2 having been first duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

02:35

5 BY MR. BOLINSKE:

6 Q. Okay. Good afternoon. Could you just tell us your name,
7 please? I know you just did it, but can you do it again,
8 please?

9 A. Sommer Cummings.

02:35

10 Q. And what is your relationship to Mr. Lonnie Spotted Bear?

11 A. I date his son.

12 Q. Okay. And how long have you dated his son?

13 A. Well, since 2001.

14 Q. So a long time.

02:35

15 A. Yep.

16 Q. Sixteen years, or so?

17 A. Yep.

18 Q. And can you just give us a little bit about your personal
19 background, just who you are, where you're from, just so the
20 jury knows you a little bit?

02:35

21 A. Sure. I'm from New Town, North Dakota. I grew up -- we
22 -- I first lived in Bismarck until about the fourth grade. I
23 moved to Belcourt, North Dakota, went all through high school
24 there. And then I moved to New Town again, worked in a casino,
25 and then started to hang out with Morley Spotted Bear.

02:36

1 Then I moved to Twin Buttes, and there I worked at a
2 Boys and Girls Club for 12 years, up until 2015. And then I
3 switched jobs to -- I am now a housing manager for 20-unit --
4 20 housing units and two six-unit apartments.

02:36

5 Q. Okay. And you've known Lonnie for a long time then too
6 because you dated his son?

02:37

7 A. Oh, yep. I had -- one of my favorite uncles used to date
8 his sister, Alice Spotted Bear, so the Spotted Bears were
9 always kind of in our lives in some way, shape or form. I only
10 knew Lonnie in passing, never really had a conversation with
11 him. I was younger. I think I was about eight years old when
12 my Uncle Arson (ph) passed away that used to date his sister.

13 Q. So prior to 2001, even before his son --

02:37

14 A. Oh, yeah. Yep, and I knew -- I mean, I knew -- I thought
15 Alice was my aunt. She was so kind. He had another sister
16 that passed away. Her name was Gertzie. I thought she was my
17 aunt because she was amazing to us. She was a really great
18 gal.

19 Q. Okay. And how many -- do you have children?

02:37

20 A. I do. I have a 20-year-old daughter. I have a
21 13-year-old son with Morley. The 20-year-old is with a
22 previous relationship. I have a ten-year-old daughter with
23 Morley, and I have a soon-to-be three-year-old son with Morley.

02:38

24 Q. Okay. And these kids or some of these kids growing up,
25 were they around Lonnie and --

1 A. My daughter was two --

2 Q. I'm sorry. Just wait one second.

3 A. Okay.

4 Q. Just to make everybody -- you can just wait, please, until
5 I finish the question, and then you --

6 A. Sorry.

7 Q. -- do the answer. No problem, but we just want people to
8 be able to write it down, and stuff.

9 So you've had your children at family events that
10 Lonnie has either been at or put on. Just describe that.

11 A. Yes. So the funnest part to me about living in Twin
12 Buttes -- Lonnie and his dad are ranchers, and one of the
13 funnest things there is a branding. Sometimes it turns into a
14 little bit of hard work for myself and some of the other family
15 involved just because it turns into a community event. We have
16 to feed everybody, but we're thankful for all their help
17 wrestling the calves and doing a lot of the hard work. And
18 then after, we get to eat and hang out and have a really good
19 time. Not only my kids are there, but the friends of my kids.

20 Q. How many people typically would be at an event like this?

21 A. I would say any given year, 30 to 50 people. The smallest
22 amount of people, I would say maybe in the twenties --

23 Q. And this is --

24 A. -- ever.

25 Q. And this is at Lonnie's place, or where's this at?

1 A. This is annually in May usually, depending on the weather,
2 right -- he has some horse corrals just near his house.

3 Q. Okay. And you obviously know why we're here, right?

4 A. Yep.

02:39 5 Q. You know what this case is about.

6 A. I do.

7 Q. And you're aware that people have made accusations against
8 Lonnie, right?

9 A. Yes.

02:39 10 Q. And have you been around the events or grown up or been at
11 the events where these three girls have been at?

12 A. Oh, yes, not only brandings, holidays, family gatherings.
13 Thanksgivings are at Uncle Daylon's house, and Christmas we
14 usually have at the hall. I'm trying to think of other family.

02:40 15 Q. And is it kind of common to gather at Lonnie's place? Is
16 that where people come? I mean to his son's place and his
17 place and --

18 A. Yep.

19 Q. -- things like that?

02:40 20 A. Oh, yeah.

21 Q. Okay.

22 A. Yeah.

23 Q. Those are the centers or the hubs of sort of --

24 A. Yep.

02:40 25 Q. -- entertainment --

1 A. Absolutely.

2 Q. -- where people go?

3 A. Yep.

4 Q. And did you ever observe Lonnie do anything to any young
5 girls --

6 A. Never.

7 Q. -- that's terrible?

8 A. Not since I've been there.

9 Q. Okay. You've never observed him in your life --

10 A. I have not in my life seen him do anything inappropriate.

11 Q. Okay. And you have taken your children to his place
12 throughout the years, right?

13 A. I absolutely have. My oldest daughter was introduced to
14 Lonnie when she was two years old. Morley and I were quite a
15 bit younger then, and we definitely liked to have alone adult
16 time, go out or wherever we decided to do, hang out with
17 friends. Weekends, Morley was a avid softball player, weekends
18 away from the house.

19 And my daughter, Raven, would probably be mad at me
20 for saying this, but she would leave a trail of clothes from
21 the entryway to the living room, and she just liked to run
22 around in her underwear, and if -- I mean, she just had
23 absolute comfort there. There was never amiss where she felt
24 like grandma and grandpa were not her grandma and grandpa.

25 Q. Okay. So is it fair to say you trusted Lonnie?

1 A. I trust Lonnie with everything.

2 Q. Okay. And there's been -- I know you haven't been in
3 here, but there's been a lot of talk about an iPad in this
4 case. Do you know anything about an iPad?

02:42

5 A. The only thing that I know about an iPad is I budget my
6 money as best I can. When I started hanging out with Morley,
7 he's like, "Why don't you use your paychecks and buy a
8 vehicle?" I think when I moved there, I had a -- kind of a
9 beat-up '91 Chevy pickup, but he said just invest your money in
10 a new vehicle, so that's what I decided to do, but budgeted
11 very wisely.

02:42

12 We had just -- Haylon was coming up into technology
13 and kind of into games, and I had a little bit of money set
14 aside. And in -- I wanted it before Christmas, but I was able
15 to buy him an iPad in January of 2012.

02:42

16 Q. Okay. And why is that important? I mean, does -- does --

17 A. Well, okay.

18 Q. What's going on with this iPad?

19 A. From what I can tell, as an important part of the girls
20 saying that -- okay. So if we want to reverse just a bit,
21 Haylon is the same age as one of the girls.

02:43

22 Q. Okay.

23 A. Two of them, maybe. Well, I think they're all the same
24 age, actually.

02:43

25 Q. And Haylon is who again?

1 A. Haylon is my son.

2 Q. Okay. And one of the allegations here was Sxxxxxx
3 claiming that Lonnie wanted to go look for Haylon's iPad. Does
4 that sound right?

02:43

5 A. Yep.

6 Q. And go ahead. I interrupted you.

7 A. No, that's fine. And the years and -- their ages don't
8 match with the year that the iPad actually existed.

02:44

9 Q. Okay. So the allegations against Lonnie, if I told you
10 they're saying between August 23, 2010, and August 23, 2011,
11 that this happened with Sxxxxxx, does that sound right?

12 A. Mm-hmm.

13 Q. And was Haylon's iPad even in existence?

02:44

14 A. No, Haylon's iPad was ordered -- I don't know when it was
15 ordered, actually, but I did not receive it in the mail until
16 January 2011, because -- I mean 2012, because like I said, I
17 wanted it before Christmas, but it just didn't happen that way.

18 Q. Okay. If I showed you a receipt for that, would that help
19 you out?

02:44

20 A. Yes.

21 MR. BOLINSKE: I guess could I mark it?

22 Q. (MR. BOLINSKE CONTINUING) Okay. I'm going to show you
23 what's been marked as -- I don't have my mike on -- as
24 Defendant's 50, and can you just take a look at that for a

02:45

25 second? Does that look like something that you provided to me?

1 A. It looks exactly like what I provided to you.

2 Q. Okay. And before you tell me what's on it, what is that?

3 A. This is a iPad receipt -- Apple iPad receipt.

4 MR. BOLINSKE: Okay. I'd offer Defendant's 50.

02:45

5 MR. O'KONEK: No objection.

6 THE COURT: Exhibit 50 is received.

7 Q. (MR. BOLINSKE CONTINUING) And could you just tell us what
8 that is? Just read on there the dates and what was ordered,
9 when it was ordered, stuff like that?

02:45

10 A. "Apple Store, order acknowledged, ordered on December 31,
11 2011, personalized iPad 2, 64 gig with Wi-Fi, 3G for Verizon,
12 black, \$829, engraving, Haylon Neci Spotted Bear. This is way
13 better than a PS3."

14 Q. Okay.

02:46

15 A. Smiley face.

16 Q. What's the date in the top right again that it was
17 ordered?

18 A. Ordered on December 31, 2011. Where does it say shipped?

19 Q. But, I mean, in any event, it was ordered after
20 August 23rd?

02:46

21 A. Oh, sorry. Yep, before the engraving it says delivered --
22 delivers January 9th through January 10th.

23 Q. Of what year?

24 A. It doesn't have a year, but it was ordered on December 31,
25 2011, so January --

02:46

1 Q. Okay. So, I mean, December 31, 2011, is after August 23,
2 2011, is that accurate or fair to say?

3 A. Yep.

4 Q. Chronologically?

5 A. Yep.

6 MR. BOLINSKE: Okay. Thank you, Sommer. I think
7 that's all the questions I have.

8 THE COURT: Mr. O'Konek.

9 MR. O'KONEK: Yes, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. O'KONEK:

12 Q. Good afternoon.

13 A. Hi.

14 Q. I just have a brief few questions, ma'am. You are dating
15 Lonnie's son?

16 A. Yes.

17 Q. That was Morley?

18 A. Yes.

19 Q. You had mentioned that you had a son named Haylon, who is
20 roughly the same age as Sxxxxxx?

21 A. Yep.

22 Q. And you have a daughter, Ashlynn?

23 A. I do.

24 Q. Okay. And when you were around Lonnie's home or Daylon's
25 home, did Sxxxxxx ever spend time with Haylon?

1 A. Not so much at Daylon's.

2 Q. Okay. But did she ever spend -- did -- Haylon spent time
3 with Sxxxxxx, didn't they?

4 A. Yeah.

02:47

5 Q. Because they were close in age?

6 A. Yes.

7 Q. They were good friends.

8 A. Yeah.

02:47

9 Q. They were almost neighbors, I think, based upon kind of
10 where everybody lived in Twin Buttes?

11 A. Yes.

12 Q. And you weren't around Sxxxxxx all the time that she was
13 in Twin Buttes, were you?

14 A. Only when she would come to Boys and Girls Club.

02:47

15 Q. Right, but when she would come, let's say, to Twin Buttes,
16 you weren't around her every single second, were you?

17 A. No.

18 Q. You weren't around Haylon every single second? You wanted
19 your alone time?

02:48

20 A. That was when my daughter, Raven, was the only one that we
21 had. With Haylon, you have to realize he is the firstborn
22 grandchild to Lonnie and Diana. He's -- Haylon was doted on
23 quite a bit.

24 Q. Okay. And you're close with Lonnie?

02:48

25 A. Sure.

1 Q. You don't want him to get in any trouble, do you?

2 A. No.

3 Q. When was the last time you spoke with Lonnie?

4 A. Oh, probably right before lunch.

02:48

5 Q. Okay. And do you live on Lonnie's property?

6 A. No.

7 Q. Where do you currently live?

8 A. I live on his son's property.

02:49

9 Q. Okay. And at some time after the -- Nxxxx and Sxxxxxx had
10 said that Mr. Spotted Bear had molested them, Special Agent
11 Bennett approached you to try to speak with Ashlynn and Haylon?

12 A. No.

13 Q. That never happened?

14 A. No. Can I tell my side --

02:49

15 Q. Please. Yeah.

16 A. -- what happened? Yep, so I had learned of these
17 allegations quite a few months before Special Agent Bennett and
18 Special Agent Paula Bosch and Anna Old Elk came to see me in
19 Twin Buttes. It was basically bar talk that it got to me. And
20 the person that revealed it to me, what the mother of one of
21 the young girls had said, just said, you know, "well, there's
22 no truth to it. Don't tell anybody anything. We don't want to
23 get anybody's feelings hurt over these lies."

02:49

24 So then Anna Old Elk from social services in New
25 Town, North Dakota, contacted me and said she needed to talk to

02:49

02:50 1 me because my daughter, Ashlynn, had been named in a report.
2 And I just got sick to my stomach and I'm like, what could be
3 going on? Three days had passed. Ms. Old Elk called me and
4 said, "Well, it has to do with somebody who lives in your
5 home." At the time Lonnie and Diana lived in our home because
6 their house burnt down in February, and this was the beginning
7 of April.

02:50 8 So I was greeted by Ms. Old Elk, and then I didn't
9 know right away that Special Agent Bennett and Special Agent
10 Paula Bosch were actually FBI until they revealed that later.
11 Special Agent Bennett asked if my daughter, Ashlynn, would have
12 an interview, and I said, "Absolutely not. She will not do a
13 forensic interview because you guys are barking up the wrong
14 tree and you need to consider your source." They didn't know
02:50 15 -- they didn't know I knew who this was.

16 And Special Agent Paula Bosch asked me, "How do you
17 know term 'forensic interview'?" And then after she introduced
18 herself, I knew a forensic interview because my sisters faced
19 something similar with -- my half-sisters faced something
02:51 20 similar with their step-dad. And Paula Bosch went into --
21 Special Agent Paula Bosch went in to assure me or reaffirmed to
22 me that, oh, I just want you to know that the FBI is better
23 than they were with that case at that time. I felt like --
24 Q. And I'm sorry that you had to go through that.

02:51 25 A. So -- so to answer your question, he never asked if Haylon

1 could be interviewed.

2 Q. Okay.

3 A. He did ask if Ashlynn could be interviewed, and I said,
4 "Absolutely not because it's absolute nonsense to me."

02:51

5 Q. Okay. And I promise this will be brief, but you mentioned
6 something about an iPad earlier. Sxxxxxx would come over and
7 play with the iPad with Haylon, right?

8 A. Not to my house.

02:52

9 Q. Okay. They would potentially go to Daylon's house,
10 potentially?

11 A. No, she -- if Sxxxxxx spent any time with Haylon, it was
12 possibly after church or it was at Lonnie and Diana's house.

13 Q. Okay. So Sxxxxxx would spend time at Lonnie's house.

14 A. After 2011.

02:52

15 Q. Okay. But the day --

16 A. Many times --

17 Q. The day is --

18 A. Before then, after --

02:52

19 (The witness was admonished by the court reporter to
20 wait for the entire question before answering.)

21 Q. (MR. O'KONEK CONTINUING) But regardless of the date,
22 there were times when, let's say, Sxxxxxx was young and around
23 obviously the same age as Haylon that she would spend time
24 together with Haylon at Lonnie's house.

02:52

25 A. I wasn't always there, so I'm not quite sure.

1 Q. So you weren't over at Lonnie's house when they would --
2 Haylon and Sxxxxxx would spend time there.

3 A. Right.

4 MR. O'KONEK: I have no further questions.

5 THE COURT: Anything else?

6 REDIRECT EXAMINATION

7 BY MR. BOLINSKE:

8 Q. Did -- I just want to clarify. Did you just say that
9 Sxxxxxx was at Lonnie's house many times after this -- after
10 this purportedly happened?

11 A. Lonnie's house, the lake with no parents, always with us
12 always around, yes, up until two thousand -- when she
13 transferred to New Town.

14 Q. What year was that, if you know?

15 A. 2016.

16 Q. Okay. And last question, if you thought that this
17 happened to these girls, would you be here testifying today on
18 Lonnie's behalf?

19 A. Absolutely not.

20 Q. Why not?

21 A. I feel like I have a intuition or a gut instinct when it
22 comes to people. When I was young, somebody assaulted me. I
23 was -- I don't think I was even in Head Start yet, but I know
24 that something did happen to me, and it -- I didn't say
25 anything. I didn't do anything. I don't know who did this to

1 me. I would never -- I'm a tough mother. I'm a hard mother.
2 I'm a mean mother to my kids, but the number one thing that I'm
3 going to do is protect them.

02:54 4 Q. And you're -- you're not here just to protect Lonnie,
5 right?

6 A. Absolutely not. If there was a truth -- an ounce of truth
7 to --

8 MR. O'KONEK: Objection, calls for speculation.

9 THE COURT: Sustained.

02:54 10 Q. (MR. BOLINSKE CONTINUING) Okay.

11 A. If I felt like --

12 MR. O'KONEK: Objection.

13 MR. BOLINSKE: Thank you. That's all I have.

14 THE WITNESS: Yep.

02:55 15 MR. BOLINSKE: Appreciate it.

16 THE COURT: Anything else?

17 MR. O'KONEK: No, Your Honor.

18 THE COURT: All right. Thank you. You may step
19 down.

02:55 20 THE WITNESS: Thank you.

21 MR. BOLINSKE: Kelly McGrady.

22 KELLY MCGRADY,

23 having been first duly sworn, was examined and testified as
24 follows:

02:55 25 ///

1 DIRECT EXAMINATION

2 BY MR. BOLINSKE:

3 Q. Would you just tell us your name, please?

4 A. Kelly McGrady.

02:56

5 Q. And how do you fit into all this? How do you fit in
6 relation-wise?

7 A. Grandpa Lonnie.

8 Q. Okay. What relation?

02:57

9 A. He's Sommer's father-in-law, but in relation to us, he's
10 Grandpa Lonnie.

11 Q. Okay. And why is that, or how is that? Can you just
12 explain to me the connection?

13 A. Sommer is my sister, and we hung out for the past 18, or
14 so, years that we've known him.

02:57

15 Q. Okay. And I'm going to back up just a little bit. Could
16 you just tell us your background, just briefly where you grew
17 up, where you went to school, what you went to school for, what
18 you do, things like that?

02:57

19 A. I grew up beginning years on the Fort Berthold Indian
20 Reservation. We moved here to Bismarck. We lived at the
21 Riverside -- or we went to school at Riverside Elementary, and
22 I think in third grade we went to Turtle Mountain, and then
23 from there, White Shield, Mandaree, New Town, and I graduated
24 from Turtle Mountain.

02:58

25 And then I joined the military, and I did the

1 National Guard, and I was a combat medic there, healthcare
2 specialist. And had babies early, but I still succeeded and
3 graduated with my nursing degree. And so currently I am the
4 nurse at the New Town Public Schools, a bus driver, their
02:58 5 at-risk mentor, a cheer coach, and --

6 Q. Okay. Thank you very much. And do you have children?

7 A. Yes, I have six.

8 Q. What ages, if you can remember them all?

9 A. Yes. My bonus daughter is 22. She comes from Hawaii.

02:58 10 And then I have an 18-year-old, a 20-year-old, a 15-year-old, a
11 seven and eight.

12 Q. Okay. Girls or boys?

13 A. I have four girls and two boys.

14 Q. Okay. And you said you've known Lonnie for about 18
02:59 15 years?

16 A. Yes.

17 Q. And your kids are in the age range then where if you hung
18 out with Lonnie, your kids would be with you at Lonnie's?

19 A. Yes.

02:59 20 Q. And tell us about those years, just kids growing up and
21 going to Lonnie's, what you do, where you'd go, things of that
22 nature.

23 A. Both grandpa Lonnie and Grandma Diana, just extremely
24 welcoming. Like I said, there's no relationship or blood
02:59 25 relationship there, but we would go down for branding,

1 holidays. we'd see them for birthdays, just every year
2 throughout the year.

3 And then my kids would go down and help fix fence.
4 He taught my boys how to be boys sometimes because we come from
5 a blended family, and he taught them invaluable lessons. My
6 daughter, who is 18, actually went to school and lived with
7 Sommer, Morley, Grandpa Lonnie and Grandma Diana, and the
8 22-year-old would go down there every summer, every Fourth of
9 July. We were there constantly.

10 Q. So this was year after year after year after year --

11 A. Yes.

12 Q. -- starting about what year?

13 A. When I initially moved home from Virginia back in -- I
14 want to say '03, Sommer and Morley were in the trailer they had
15 been fixing up, and I think we would go down there for
16 branding, to see what hard workers Grandpa Lonnie and Morley
17 are. And the womenfolk have to be just as hard, so we would
18 help with cooking or whatever we had to do.

19 Q. Okay.

20 A. And every summer since then.

21 Q. And, again, you had your kids --

22 A. Yes.

23 Q. -- at Lonnie's place, right?

24 A. Yes.

25 Q. And strange questions, but did you ever suspect Lonnie of

1 doing anything inappropriate with your kids?

2 A. No.

3 Q. Did you ever see Lonnie do anything inappropriate with
4 your kids?

03:01

5 A. Nope.

6 Q. Did he have access to your kids if he had wanted to?

7 A. Yeah, we were always there.

8 Q. Okay. And had you ever heard any allegations of Lonnie
9 doing anything to kids until this?

03:01

10 A. Nope.

11 Q. Okay. And do you know Nxxxx?

12 A. I don't know her.

13 Q. Do you know Sxxxxxx?

14 A. I know who she is, but I don't know her know her.

03:01

15 Q. Okay. Do you know Mxxxx?

16 A. I know who she is, but I don't know her.

17 Q. Okay. So you don't have any testimony regarding their
18 truthfulness?

19 A. No.

03:01

20 MR. BOLINSKE: Okay. Thank you, ma'am. That's all I
21 have.

22 THE WITNESS: Thank you.

23 THE COURT: Any questions?

24 MR. O'KONEK: Briefly, Your Honor.

03:01

25 ///

1 CROSS-EXAMINATION

2 BY MR. O'KONEK:

3 Q. Ma'am, I just have a couple of questions. Where do you
4 currently live in Fort Berthold?

03:02

5 A. In New Town.

6 Q. In New Town?

7 A. Yes, sir.

8 Q. Okay. And you mentioned your relationship with -- it's
9 Grandpa Lonnie, I think is how you refer to him?

03:02

10 A. Yes.

11 Q. He's somebody that you care about?

12 A. Deeply.

13 Q. And you wouldn't want him to get in any trouble, would
14 you?

03:02

15 A. Nobody wants to be in trouble. But, yeah, I care about
16 him deeply.

17 Q. When was the last time you talked with him?

18 A. Today at lunch.

19 Q. And just to kind of go into some questions involving the
20 children, you mentioned that you really -- you know of, but
21 don't know the three girls who stated that Lonnie had molested
22 them?

03:02

23 A. Yes.

24 Q. So you weren't there -- have you ever really been around
25 any of these three girls?

03:02

1 A. They're there at the lake. They're there at branding.
2 It's not like I go and -- if they come around -- I'm Auntie
3 Kelly to a majority of these kids. Just these ones I haven't
4 gotten to know. The rest of the Boys and Girls Club, yeah.

03:02

5 Q. And the lake, that's in Twin Buttes near Lonnie's --

6 A. Yes.

7 Q. -- property? And that would be -- when you're there,
8 you're not always around them, though, when they're visiting
9 Twin Buttes?

03:03

10 A. Not around those specific girls, no.

11 MR. O'KONEK: Okay. I don't have any other
12 questions. Thank you.

13 THE COURT: Anything else?

14 MR. BOLINSKE: Just one or two.

03:03

15 REDIRECT EXAMINATION

16 BY MR. BOLINSKE:

17 Q. Are you just making this stuff up?

18 A. No.

19 Q. Are you here to protect Lonnie?

03:03

20 A. No.

21 Q. Would you protect him if you thought he did this?

22 A. Oh, no, definitely not. I -- I see kids on a daily basis.
23 I -- as the at-risk worker, I have multiple kids in any office
24 telling me, and we're seeking the assistance and we're doing
25 what we can to help children such as myself. I'm a survivor,

03:03

1 and -- like many of my sisters are. We know the character or
2 the feeling of who not to be around or who to be around, and my
3 kids feel the very same. And if we did not feel comfortable, I
4 wouldn't even address him as Grandpa Lonnie.

03:04

5 Q. So you feel safe and comfortable around Lonnie.

6 A. Absolutely.

7 MR. BOLINSKE: Thank you. That's all I have.

8 MR. O'KONEK: Nothing else, Your Honor.

9 THE COURT: All right. Thank you. You may step

03:04

10 down.

11 You may call your next witness.

12 MR. BOLINSKE: Can I have just two minutes, because I
13 think I'm going to change it up here? Can I have just one
14 minute?

03:04

15 THE COURT: All right. That's fine. You folks can
16 stand and stretch if you wish. We'll take a break in
17 15 minutes, or so.

18 MR. BOLINSKE: Okay. Thank you, Your Honor. I'd
19 call -- are we ready? Okay. I'd call Lonnie --

03:05

20 THE COURT: We're back on the record. Go ahead.

21 MR. BOLINSKE: I'd call Lonnie Spotted Bear.

22 LONNIE SPOTTED BEAR,

23 having been first duly sworn, was examined and testified as
24 follows:

03:06

25 ///

1 DIRECT EXAMINATION

2 BY MR. BOLINSKE:

3 Q. Okay. Even though everyone knows this, would you just
4 tell us your name, please?

03:06

5 A. Pardon?

6 Q. Are you having trouble hearing? Even though everyone
7 knows this, would you just tell us your name, please?

8 A. Lonnie Dale Spotted Bear.

03:07

9 Q. And I guess just like most of the other people, I'd like
10 you to give kind of a chronological or biological background,
11 where you grew up, where you went to school, where you lived.
12 Can you just start grade school and just go not in detail, but
13 just through some of that?

03:07

14 A. Okay. I was born in Elbowoods. That's under water now,
15 but my dad was a full-blooded Indian, and my mother was a
16 full-blooded Norwegian. I'm a half-breed. And I went to
17 school one year in Elbowoods, and then they took the bridge
18 out, and so they sent us away to a boarding school in South
19 Dakota, Stephan, South Dakota, so I went there for four years.
20 It's a Catholic school. Then I come back and went three years
21 back at Twin Buttes, then back to South Dakota for another four
22 years. I graduated down there.

03:07

03:08

23 Then I went to two years of trade school in Chilocco,
24 Oklahoma, and then I come back. I got a job up in New Town on
25 the rigs. Then I -- that's where I met my wife, Diana. She

1 was from Keene, North Dakota. We got married. Then we lived
2 in Keene, and then -- and then we moved to Dickinson. We
3 stayed there for four or five years.

03:08 4 Then we moved back to Twin Buttes and I start
5 ranching. Got cows and horses, and that's what I'm doing now.
6 We got about 200 head of cows and, oh, I'd say about 25 horses.
7 That's in Twin Buttes, me and my boy, Morley.

8 Q. Okay. And you have a ranch in or around Twin Buttes?

9 A. Yes.

03:09 10 Q. And what -- can you just describe the ranch, what size,
11 what --

12 A. We run on -- I got about 1,300 acres.

13 Q. That you rent or own?

03:09 14 A. That I own. Then we rent to -- they call them range
15 units. They got a -- that run all the way to the river, so we
16 got two of them. My boy's got one and I got one that -- we're
17 about three miles up. Then we got the range units to the
18 river.

19 Q. What's a range unit? Is that where the cattle go?

03:10 20 A. Yeah, that's where you run your cows and --

21 Q. Okay. And how long have you ranched?

22 A. Oh, I think we moved back about in sixty -- late -- late
23 sixties.

24 Q. Moved back to where?

03:10 25 A. Twin Buttes from Dickinson.

1 Q. Okay. And do you or have you had over the years family
2 events at your place in Twin Buttes or your ranch?

3 A. Yes, we do our branding there. Then we -- we got a cabin
4 down by the river -- or a trailer, I should say. Everybody
5 goes -- in the summertime they go down there. We boat and fish
6 and have fish fries and --

7 Q. Okay. When you say "everybody," just your immediate
8 family or extended family, or how -- how many people are we
9 talking on any given occasion?

10 A. It's mostly family, but if anybody else wants to come
11 down, they're welcome, you know.

12 Q. Okay. And these are your places? It's your cabin or
13 trailer down there?

14 A. Yeah.

15 Q. Okay.

16 A. A lot of them bring trailers down for -- they'll camp a
17 few days and go back up like Fourth of July or Labor Day
18 weekends and -- or just go down there on some weekend when it's
19 real nice.

20 Q. Okay. And has this gone on for -- how many years that you
21 remember family get-togethers at those locations?

22 A. Oh, I'd say about the last -- I'm 73 years old now, and
23 I'd say about the last 30 years or better.

24 Q. Okay. And I'm going to just get right to the point here.
25 You know why we're here, right?

1 A. Yes.

2 Q. You've been accused of child molestation. You're aware of
3 that?

4 A. Yes.

03:12 5 Q. And I'm going to start with Sxxxxxx. Did you
6 inappropriately touch or molest Sxxxxxx?

7 A. I did not touch or molest her.

8 Q. Did you molest or inappropriately touch Nxxxxx?

9 A. I did not do that to Nxxxxx.

03:12 10 Q. How about Mxxxxx? Did you do that to Mxxxxx?

11 A. No, I -- I wrestled all three of these girls and bit their
12 necks, bit their ears, you know. And Haylon was the
13 instigator. You know, he'd start picking on me and doing
14 something to me. I'd take him down and just -- you know, I
03:12 15 always wrestled him, and he'd holler, and then these girls,
16 when they were there, they'd come running over and jump in
17 and --

18 Q. So you do what -- you do what a grandfather would do. You
19 wrestle and you play and things like that.

03:13 20 A. Yeah.

21 Q. And throughout these camping trips or family events, would
22 people bring their children? Was that common, for families to
23 bring their children to these events?

24 A. Yes.

03:13 25 Q. And was that the same for many, many years?

1 A. Yes, it was.

2 Q. And has that continued to be the same even after these
3 allegations?

4 A. Yes.

03:13

5 Q. People still bring their kids to your places.

6 A. A lot of these allegations -- some of them, what they said
7 against me, they -- the same girls were down to my place after
8 that, what they said, you know, happened way down there. Then
9 they come back and they're still -- they're still around there
10 for the last couple years, I guess, until this come up. Then
11 they quit coming down.

03:13

12 Q. And how about sitting on a lap, driving a car? Tell us
13 about that.

14 A. Yeah, so they were sitting between my legs. I did that
15 with Haylon. He used to drive, you know, and I'd -- I'd run
16 the foot feed and the brake and make sure he stayed on the
17 road. And like Nxxxx said, I'd let her do that, you know.

03:14

18 Q. So that's true. You did let kids sit on your lap --

19 A. Yeah.

03:14

20 Q. -- and pretend to drive the car.

21 A. Mm-hmm. I had that -- I bought that '71 that Morley and
22 Sommer owned, that car, and that's what they'd drive. They're
23 trying to say it was my pickup, but it was the '71 pickup.

24 Q. Okay. And can you look the jurors in the eye and tell
25 them that these things did not occur?

03:14

1 A. No, these things did not occur.

2 Q. You're under oath here, right?

3 A. Yep.

4 Q. And you're telling the truth?

03:14

5 A. Yes.

6 Q. And you've maintained this truth the entire time.

7 A. Yes.

8 MR. BOLINSKE: Okay. Thank you, Lonnie. That's all
9 I have.

03:14

10 THE COURT: Mr. O'Konek.

11 MR. O'KONEK: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. O'KONEK:

03:15

14 Q. Sir, I just have a couple of background questions. You
15 said you're currently married to Diana Spotted Bear?

16 A. Could you talk up?

17 Q. Yes, sir. I apologize. Are you -- you're currently
18 married to Diana Spotted Bear?

19 A. Yes.

03:15

20 Q. And for how long have you been married?

21 A. Fifty years.

22 Q. Fifty years. Okay. And Ivetta Spotted Bear is your
23 sister?

24 A. Yes, she is.

03:15

25 Q. And she was your younger sister.

1 A. She was what?

2 Q. She was your younger sister? You're older than she is?

3 A. Yeah, I'm older than her.

4 Q. Travis Hallam is your nephew?

03:15

5 A. Yes.

6 Q. And Crystal Hallam was married to Travis at one point?

7 A. Yes.

8 Q. And you're Nxxxx's godfather?

9 A. I guess you could say that I was her godfather too, but --

03:15

10 Q. But you were her godfather. I apologize, not grandfather,
11 but godfather.

12 A. Yeah, godfather.

13 Q. Are you Sxxxxxx's godfather?

14 A. Am I what?

03:16

15 Q. Sxxxxxx's godfather?

16 A. No, I'm not Sxxxxxx's godfather.

17 Q. But Sxxxxxx and Nxxxx, they consider you like a
18 grandfather.

19 A. I suppose, yeah.

03:16

20 Q. And what was your relationship to Mxxxx Sxxxxxxxxx?

21 A. My relationship to what?

22 Q. Mxxxx Sxxxxxxxxx.

23 A. She's -- I'm related to her through Clyde Baker. Him and
24 my dad were first cousins, and so -- so me and her mom would be
25 second cousins.

03:16

1 Q. Okay. And her mom --

2 A. She'd be my niece or -- through Indian way.

3 Q. When you say "her mom," Meranda would be your niece.

4 A. Yeah.

03:16

5 Q. And what's your relationship to Brad Sanderson?

6 A. He's my nephew.

7 Q. Now, you're also the -- you talked about some people that
8 are in your family. Now, we heard from Sommer, and she's
9 dating one of your sons?

03:17

10 A. Yes.

11 Q. That's Morley?

12 A. Yes.

13 Q. And you have a grandson named Haylon?

14 A. Yes.

03:17

15 Q. Same age as roughly all three of the girls?

16 A. Yeah, pretty close.

17 Q. And roughly how long have you lived in Twin Buttes? I
18 think you kind of gave us some background, but for how long
19 have you lived in Twin Buttes?

03:17

20 A. About -- about all my life. You know, I grew up there.

21 Then after high school, then I went to -- got a job in New Town
22 in the oil fields. I worked -- I worked on work-over rigs
23 there for ten years, or so. Then I went back to -- when I got
24 back to Halliday, I rough-necked for about another 10, 15

03:18

25 years.

1 Q. Okay. And --

2 A. I was a driller on the rig, or --

3 Q. Yes, sir. I didn't mean to interrupt. Sir, you -- but
4 you lived there between 2009 and 2014?

03:18

5 A. Yes.

6 Q. But at that time you lived in a different home than you
7 live in now. Is that fair to say?

8 A. I lived in the home that burnt down, yeah.

03:18

9 Q. You lived in a home that had burned down. When did that
10 home burn down?

11 A. Last -- about last year, a little bit over a year ago.

12 Q. And so this home that you -- that had burned down, that
13 was on your property?

14 A. Pardon?

03:18

15 Q. You had owned the property where this house was.

16 A. Yeah.

17 Q. And you had property that was on or near a lake?

18 A. I have --

03:18

19 Q. I apologize. I'll try to talk louder. You have property
20 that's on or near a lake?

21 A. The -- where we got our trailer and that, that there is
22 Corps -- Corps land, but they give it back to the tribe now, so
23 it's tribal land.

03:19

24 Q. And I think you'd said on direct examination that people
25 would kind of come over to your house for family gatherings?

1 A. Yeah, they'd come over there or we'd go to Daylon's.

2 Q. Okay. And you --

3 A. He had a big house.

4 Q. And Daylon, he has the big house. How far was that away
5 from the house that had burned down?

6 A. Just about three-quarters of a mile.

7 Q. Okay. And when these family gatherings would happen,
8 people would spend time at the lake, right?

9 A. Yeah.

10 Q. Okay. And you would have people on your property.
11 Sometimes Mxxxx would come over to your home?

12 A. Who would come over?

13 Q. Mxxxx, she'd come and visit you or visit Haylon?

14 A. She was over there -- there's a Thanksgiving when she said
15 that happened to her. She was there.

16 Q. So Mxxxx was at your home?

17 A. Then she was back to our place again about three years
18 ago, or so, something like that. They got pictures of it.

19 Q. Okay. And Nxxxx would sometimes spend time at your home?

20 A. Yes, she did.

21 Q. She'd sleep overnight?

22 A. Yes, she would.

23 Q. And Ivetta would leave Nxxxx with you for periods of time
24 because Nxxxx would play with Haylon.

25 A. Yeah, she'd -- Nxxxx stayed with us more than any of them,

1 but she'd -- Ivetta would leave her maybe when she went to
2 Denver or someplace.

3 Q. Okay.

4 A. She'd leave her there about two or three days.

03:20

5 Q. And, sir, Sxxxxxx would also visit you on your property or
6 Daylon's house?

7 A. Yes, but she never stayed over.

8 Q. Okay. But she spent time with Haylon. She was playing
9 with Haylon.

03:20

10 A. Yeah.

11 Q. And this occurred between 2009 and 2014.

12 A. That she stayed over?

13 Q. Well, these were the time -- around that time range, that
14 five-year time range, those three children would spend time at
15 your property.

03:21

16 A. Two of them would.

17 Q. Okay.

18 A. Mxxxx -- Mxxxx was probably only there twice, you know.
19 She wasn't at -- probably just at my house twice -- or once.

03:21

20 She was at Daylon's once. She -- she hardly ever comes around.

21 Q. But Sxxxxxx and Nxxxx were at your homes multiple times
22 during that time period.

23 A. Nxxxx was, but Sxxxxxx, she'd come over every once in
24 awhile.

03:21

25 Q. Okay.

1 A. Like it would be on a Sunday. She'd want to come over
2 after church.

3 Q. Okay.

4 A. So then I'd take them down to the river, and --

03:21

5 Q. Okay. And I want to talk a little bit about that, if
6 that's okay?

7 A. Yeah.

8 Q. Okay. So, sir, when you say you took them down to the
9 river after church, are you referring to Nxxxx or Sxxxxxx?

03:21

10 A. A lot of times they'd both come.

11 Q. Okay. And so take me through how you --

12 A. Then I had the two Benson boys, and I'd pick up, you know,
13 all the kids, or --

14 Q. And I think you mentioned a --

03:22

15 A. -- Joey.

16 Q. -- truck. It was a '71 pickup that you had?

17 A. A '71 that one summer I was talking about.

18 Q. And you had that at the time, though, when these children
19 were young?

03:22

20 A. Did I have that what?

21 Q. Did you have it at the time when, let's say, Sxxxxxx
22 and --

23 A. I still got it.

24 Q. Okay. You still have it.

03:22

25 A. Yeah.

1 Q. And you had mentioned that you let the girls -- or you let
2 people sit on your lap when you would drive?

3 A. They didn't sit on my lap. They sit between my legs right
4 here, and --

03:22

5 Q. Yes, sir.

6 A. -- I'd move the seat back, and then they drive.

7 Q. And, sir, I just have -- the question I have is, who would
8 actually sit between your legs, which -- which people?

03:22

9 A. Haylon would. He'd do it. And Sxxxxxx wouldn't, but
10 Nxxxx would.

11 Q. Okay. So Nxxxx would?

12 A. Just Nxxxx and Haylon, the only ones I know.

13 Q. And would you -- would you ever pick up Nxxxx at Ivetta's
14 home to take her someplace?

03:23

15 A. I'd pick her up after church, yeah.

16 Q. Okay.

17 A. And then I'd be taking her home, and she'd say, "Can I go
18 -- can I go back with you? Can I go back with you guys?" I'd
19 say, "Well, you got to ask your folks." And then she'd say,
20 "You ask them because they won't let me go if I ask them." So
21 we'd pull in, and Ivetta come out, and I'd just tell her, you
22 know, she wants to go to our place.

03:23

23 Q. And were there -- there were times where you would ask
24 Ivetta if Nxxxx could go play with Haylon, right?

03:23

25 A. How many times I asked her that?

1 Q. No, but you -- you'd asked, at least sometime, for Ivetta
2 to allow Nxxxx to play with Haylon, right?

3 A. Yeah, she always let her go over there.

4 Q. But you would ask for that to happen.

03:23

5 A. Sometimes she'd ask. And, yeah, then when she didn't want
6 to, why, she'd say, "You ask. You ask."

7 Q. And it was the same way with Sxxxxxx. You would ask
8 Travis or Crystal if Sxxxxxx could play with Haylon.

9 A. Sxxxxxx would usually ask herself.

03:24

10 Q. Okay. But was there ever a time --

11 A. Once in awhile when --

12 Q. I'm sorry, sir. I didn't mean to interrupt. Please
13 continue.

03:24

14 A. Well, maybe once in awhile, you know, I'd ask her when she
15 wanted me to.

16 Q. Okay.

17 A. She'd say, "You go ask if I can go with you." If we're
18 going to the river, so I'd say, "Hey, I'm going to the river.
19 I'm taking them with me." They knew where she was going.

03:24

20 Q. Okay. So when you say "they," who are you referring to?

21 A. Travis and Crystal.

22 Q. And at some point did Travis and Crystal leave Sxxxxxx
23 with you when they went to Cancun?

03:24

24 A. They never left her with me when I went to canteen (sic).
25 They left Cheyenne with us.

1 Q. Okay.

2 A. They keep saying they left her. She never stayed with us.

3 Q. Okay. Did she ever stay with Daylon that you know of?

4 A. She ever what?

03:25

5 Q. Stay with Daylon.

6 A. Not that I know of. Cheyenne stayed with us, the oldest
7 one, because she had bad grades, and they left her there that
8 one year. They didn't take her.

03:25

9 Q. And I think you had mentioned, just kind of going back,
10 that Nxxxx had slept over at your home, right?

11 A. She what?

12 Q. Had slept over at your house?

13 A. Yeah.

14 Q. Where would -- where would she sleep?

03:25

15 A. Pardon?

16 Q. Where in the house would Nxxxx sleep?

17 A. Sometimes she'd sleep on the couch, and sometimes she'd
18 sleep on the floor. A lot of times Haylon was sleeping there
19 on the couch, and she'd sleep on the floor.

03:25

20 Q. Okay. And during those times, where would -- where were
21 you sleeping during these times, which room of the house?
22 Which room of the house were you sleeping in when -- whenever
23 Nxxxx was sleep over?

24 A. Oh, they got a -- I slept in my bedroom.

03:25

25 Q. Okay.

1 A. I got my own room.

2 Q. And you -- you still have a workshop on your property,
3 sir?

4 A. Yes, I do.

03:26

5 Q. What kind of a workshop is it?

6 A. It's just a little Quonset kind of where you could keep
7 your tractor in the wintertime and work on it and -- or put
8 your pickups in there and change the oil and --

9 Q. Okay. Is it --

03:26

10 A. It's a little -- it ain't too big. It's, oh, I'd say
11 about a 40-by-30.

12 Q. Okay. A 40-by-30. And how far is it away from the house
13 that had burnt down?

14 A. It's about, oh, 25 yards.

03:26

15 Q. Okay. So at some point did you -- you asked Nxxxx to help
16 you at the workshop?

17 A. What she's talking about is I was doing a field over by
18 their place, and when I was doing that field, well, my blades
19 on the -- it's a swather. It's a rotary, but we just got it,
20 and it spins in circles. They got a bunch of little blades on
21 all these deals and it spins in circles. And when I was
22 watching them, it wasn't cutting good, so I was going to change
23 those blades, so I got out and went under there and I start
24 changing the blades, and -- but every time I'd pull on one, it
25 turned. It kept turning.

03:27

03:27 1 So Ivetta and Dave's house was only about a half mile
2 away, so I drove in my pickup to go get Anthony. And when I
3 got over there, they said Anthony is at his girlfriend's place
4 in Killdeer. Then Ivetta said, "Take Nxxxx. She could -- she
5 cold hold that." So I -- so I said okay, she could probably do
6 it. I had a big wrench over there, so she come out.

03:27 7 We got over to the fields, and then she was trying to
8 hold the wrench. And then I was pulling on the bolts, trying
9 to loosen them to change that, and it was still kind of
10 spinning because she couldn't hold it. So then I said, "well,
11 we'll just take it back down." we left our pickup there. That
12 tractor has got a double seat in there, so she sat down here
13 and we drove my swather back down there to change the blades.

03:28 14 Then I put a cardboard down underneath and crawled --
15 you could lift those flaps up and crawl under there. And I
16 went and got a bigger wrench, like a pipe wrench where you
17 could put on there. And she was holding that, and I was taking
18 the blades off and changing them. And finally she got tired
19 and she said, "I'm going to get out and get a drink of water."
03:28 20 You know, it's all dirty and dusty under there. It's like,
21 yeah, go ahead. So she got out, and then I got out too. I got
22 a drink. And we was out in front of the shop.

03:28 23 And then I says -- well, we only had about maybe four
24 left to do, so I went out and said, "well, let's go, if you
25 could hold that." And then she said, "No, you know, I don't

03:29

1 want to go back under there." So I was like, "Come on." I
2 grabbed her hand. I said, "Come on." I said, "It won't take
3 long." Then she jerked it back and she kind of stumbled a
4 little bit and she said, "No, I ain't going back under there."
5 I couldn't blame her because it was all dirty and dusty, and
6 that, so she -- I said okay.

03:29

7 Then I just went under there, and I found a bar and I
8 stuck it down in one of those holes, and that's how I -- you
9 know, so I finished. She went up to the house. She walked up
10 to the house. Well, when I tried to grab her hand, that's when
11 she pulled out her phone. She did try to call.

12 Q. Okay.

13 A. But her dad -- or her grandpa didn't answer.

03:29

14 Q. Okay. And I want to go back up a little bit. I
15 appreciate you --

16 THE COURT: Mr. O'Konek, I think we're going to take
17 a break here.

18 MR. O'KONEK: Yes, sir.

03:29

19 THE COURT: My court reporter has been going quite a
20 while as well. We're going to take just a 15-minute break, and
21 then we'll continue with the questioning. So please don't
22 visit amongst yourselves during the short break, and we'll see
23 everyone back in about 15 minutes.

03:46

24 (A recess was taken from 3:29 p.m. to 3:46 p.m., the
25 same day.)

1 THE COURT: We're back on the record. We'll continue
2 with the questioning of Mr. Spotted Bear. Mr. O'Konek.

3 MR. O'KONEK: Thank you, Your Honor.

03:48 4 Q. (MR. O'KONEK CONTINUING) Mr. Spotted Bear, where we just
5 left off is you were talking about Nxxxx at your workshop and
6 that she had made a phone call to her grandfather. Could you
7 kind of briefly describe what happened?

03:48 8 A. Yeah, after she got her drink of water, and that, and I
9 got mine, I tried -- tried to get her to go back, you know, to
10 hold that, and she didn't want to. So I just grabbed her hand
11 and said, "Yeah, come on. Help me out here, finish up. We
12 ain't got much to do," I said, and I grabbed her.

03:49 13 And then that's when she pulled out her phone and
14 start -- she pulled it back and she said, "No, no, I don't want
15 to," and she start, you know, speed dialing, I guess. But
16 she'd dial, and that, and so I just let her go. Then I
17 thought, well, okay, but -- and she -- her grandpa didn't
18 answer her or -- like she said he didn't, you know.

03:49 19 And so I just went back under there myself. And she
20 said, "I'm going up to the house." And I said, "Okay." I
21 said, "I'll finish up," and I put that bar in there. Then I
22 finished changing all the blades. I had to use that bar and
23 then stop the thing from turning.

24 Q. Okay.

03:49 25 A. So then I got to finish all my blades, and then I went up

03:49 1 -- then I walked up to -- then she was sitting outside on the
2 swing when I got there. Then when I went in the house, all she
3 said, "I'm hungry," she said. I said, "What do you want, a
4 sandwich?" She said, "Yeah." So I went in and made her a
5 sandwich, and I give her pop to drink and probably some chips
6 or something with it.

03:50 7 Then the phone rang, so I went over and answered the
8 phone, and it was my sister, Ivetta. She -- I talked to her.
9 She said, "What did -- what's Nxxxx speed dialing her grandpa
10 for?" I said, "Oh, she wants a ride home. She don't want to
11 -- she's tired of working." And she was eating at the table
12 then when I was talking to Ivetta. She said, "Well, he's
13 coming over on the bike," she said. So I said, "Okay." Then I
14 put it down and I told her, "Your grandpa is coming to get
03:50 15 you." I said, "So you go on."

16 That's when I give her \$50 because, you know, she's
17 helping me out. She got all dirty. And I pay all -- all the
18 -- anybody that helps me like that. You know, I give them good
19 money. I pay them, and so I paid her that \$50. And he came,
03:51 20 and I went to the door, let him in, and we talked and -- while
21 she was eating, but then when she got done eating, then she
22 went outside and they left.

23 Q. Okay. And just to stop you there, Mr. Spotted Bear, at a
24 certain point, though, you said that you grabbed Nxxxx.

03:51 25 A. Pardon?

1 Q. You said you had grabbed Nxxxx.

2 A. I had her hand, yeah. I said, "Come on," tried to, you
3 know --

4 Q. Why were you grabbing Nxxxx?

03:51 5 A. Why did I grab her? I needed help.

6 Q. Okay. And what --

7 A. I wasn't trying to molest her like she said.

8 Q. Okay. But how --

9 A. I didn't pull down her pants at all.

03:51 10 Q. And, sir, just so --

11 A. We ain't got no big tractor tires in the garage. We got
12 maybe, you know, a truck tire or something like that, but we
13 ain't -- I call Cenex and them guys to come out and change my
14 big tires.

03:51 15 Q. Okay. But you have tires in the workshop, right?

16 A. There might have been tires in my shop, you know. There's
17 tires in everybody's shop.

18 Q. And if I can ask, so when you grabbed Nxxxx by the hand,
19 how did she react?

03:52 20 A. She just pulled back, like I said. Then she grabbed her
21 phone and she start just, you know, speed dialing or whatever
22 they call it.

23 Q. And this is when she was nine.

24 A. This is when she was done?

03:52 25 Q. When she was nine years old.

1 A. Oh, I don't know how old she was.

2 Q. Well, what would be your best guess as to how old she was
3 at this point? It might -- I know it might be hard, but just
4 what would be your best guess as to how old she was?

03:52

5 A. Probably nine because that's what she said, nine or ten.

6 Q. Was this in the spring, summer, something else?

7 A. Pardon?

8 Q. Was this in the springtime, fall, summer?

9 A. It was in July. That's when we cut our hay.

03:52

10 Q. And you mentioned that you gave Nxxxx \$50. Was that for
11 the work that she had done at the shop that day?

12 A. Yes.

13 Q. Okay.

14 A. Or in the field too. We worked out there trying to get it
15 -- like I said, it was all dirty, and she crawled under one of
16 those swathers. There's dirt and itchy stuff, and you get
17 dirty.

03:52

18 Q. And I want to talk about Sxxxxxx a little bit. At some
19 point you -- when Sxxxxxx was about six, Haylon would have been
20 about six. You helped Sxxxxxx find her iPad, didn't you?

03:53

21 A. Sxxxxxx?

22 Q. Yeah, Sxxxxxx or Haylon's iPad. There's a point where you
23 helped her try to find it, didn't you?

24 A. Helped her buy it?

03:53

25 Q. Helped her find it, locate where it was.

1 A. Oh, I thought you said buy it.

2 Q. No, I apologize. I sometimes talk too fast when --

03:53 3 A. When me and Haylon and Sxxxxxx was -- we were down the
4 river, and those guys were swimming, and I was walking around
5 just by the bank, what I usually do, look -- kind of look for
6 rocks, and that. And then I wanted to go to the next bay, so
7 just like I told them, I said, "Let's go to the next bay," I
8 said.

03:54 9 So we were driving around. We went down in the --
10 it's kind of a little dip there, a coulee, and I got stuck, so
11 then I couldn't go forward, couldn't go back. I was bogged
12 down there, so then I said, "Well, we got to walk home, I
13 guess." So we start walking, and it started kind of
14 sprinkling, raining.

03:54 15 So when I got on a little -- kind of high hill,
16 because we're down in a coulee, and then I called Morley, my
17 boy. So he said, "Yeah, I'll be down." He said, "I'll come
18 down, pick you guys up." He said, "Well, where you going to be
19 at?" "We'll be walking on the road." So we walked -- I
03:54 20 suppose we walked about three-quarters of a mile, and then we
21 met him.

03:55 22 Then when we were getting in the pickup, she lost --
23 she said, "I lost my" -- and I don't know what it was, her iPad
24 or a phone. She's got a little pink one, so -- but it was kind
25 of raining, so we wanted to get out of there because it gets --

1 those roads get slick, so we went on home.

2 And then when -- when Travis and them were in Cancun,
3 I used to go over and check on Cheyenne. I'd go over there
4 and, you know, make sure she's all right because a diabetic and
03:55 5 that, and -- and their house was pretty dirty, and I told
6 Cheyenne, "You ought to, you know, take some of this stuff and
7 clean it up, and that." So then she said, "Yeah." I said, "If
8 you put it in garbage cans, I'll come back and pick it up."
9 She said okay, so I was going back there later on, and then
03:55 10 I -- you know, she had about maybe two garbage cans full, and
11 that.

12 Q. But going back to the iPad --

13 A. Then we went down looking for her iPad.

14 Q. Okay. Can you take me through what you did to help
03:55 15 Sxxxxxx find the iPad?

16 A. Yeah, I took her down and I asked her, I said, "Well, do
17 you want to go get that iPad?" And she said, "Yeah." So she
18 came with me. We went and got -- jumped on my four-wheeler and
19 we went down there. And I told her to look on this side, and
03:56 20 I'll look on that side when we got where we thought we were
21 going.

22 And we were going, and then she hollered, "There it
23 is," she said, and so I stopped and backed up, and she run and
24 got it. It was in a couch or a -- it was down in the couch, so
03:56 25 she went and got it, jumped back on, and then -- then I took

1 her back home. We went right in her house and I told Cheyenne,
2 I said, "well, we found her iPad." And she said, "Oh, good,"
3 and that was it. What she said, I never did that.

03:56 4 Q. Okay. But the time that this happened, the search for the
5 iPad, was when Travis and Crystal, Sxxxxxx's parents, were in
6 Cancun.

7 A. Were in Cancun?

8 Q. That's what you had -- you had just said that Travis and
9 Crystal were in Cancun when you were looking for --

03:56 10 A. I think that's where they were.

11 Q. Okay. Now I want to go a little bit into -- we talked a
12 little bit about Mxxxx. You said that she would come over on
13 Thanksgiving. Do you remember if Brad ever went hunting and
14 left Mxxxx alone with Haylon and you?

03:57 15 A. Yeah, they'd always go hunting in the mornings, and that,
16 and I usually go with them, but that morning I -- I got up late
17 or did something. I don't know. I wasn't there, though, I
18 mean, go with them then.

03:57 19 But Haylon -- I was laying on the couch and watching
20 TV. Here come Haylon and start messing with me, so I grabbed
21 him and took him down and start kind of beating on him and give
22 him -- kind of hit his chest. Here's the Indian torture, like
23 that, and then he start hollering for Mxxxx. "Mxxxx. Mxxxx."
24 There was a bunch of other kids there too, but she just come
03:57 25 running and grabbed my neck and start pulling me off. And I

03:58 1 said -- later I said, "She must have been wrestling with her
2 brother," you know. She wrestled like a boy, but I -- you
3 know, I just reached around and pulled her over and put her
4 down, you know. Then I made them quit, you know, give them
5 snake bites or --

6 Q. You were horsing around with them?

7 A. So, yeah, just trying to make them leave me alone.

8 Q. But you were wrestling with Mxxxx.

9 A. And Haylon.

03:58 10 Q. Okay. But you were wrestling with both of them?

11 A. Yeah.

12 Q. And Mxxxx was probably seven years old.

13 A. She was what?

14 Q. Probably seven years old.

03:58 15 A. Oh, I don't know.

16 Q. Well, what would -- what would you say? What would be
17 your best guess?

18 A. Okay. I'll say seven years old.

19 Q. Okay. And at any point did you go upstairs alone with
03:58 20 her?

21 A. Yes, I did. I went up there after they quit, and I laid
22 down on the couch up there, and here they come again.

23 Q. Okay.

24 A. They come up there and they start pulling the -- and I had
03:58 25 a blanket behind my head. They went and pulled that, and they

1 start bugging me again, you know, both of them.

2 Q. But you were alone with Mxxxx at some point.

3 A. No, I wasn't. Haylon was right there.

4 Q. Okay.

03:59

5 A. She said, "Yeah, he went up the steps and turned around."

6 That there is -- she probably said that just to help Travis

7 out.

8 Q. Okay. And, sir --

9 A. They were both right there, and I made them quit again.

03:59

10 Q. Okay. But I want to go --

11 A. And that --

12 Q. I want to go into --

13 A. That balcony, that you can look right down there. It's

14 all open and --

03:59

15 Q. And, sir, you'll get a chance to answer some of the

16 questions, but I'd ask that you just respond to the questions

17 I'm asking. I don't want to interrupt you, sir. But you had

18 mentioned earlier that you wrestled the girls. Were you

19 talking about wrestling with all three girls, Nxxxx, Sxxxxxx

03:59

20 and Mxxxx?

21 A. Not all at the same time.

22 Q. But at certain times you'd wrestle with those three

23 individuals.

24 A. Yeah, they'd stay over, and like I said, Haylon would be

03:59

25 the instigator, and as soon as he hollers, they'd run over and

1 jump in.

2 Q. Okay. And you'd mentioned something about that you bit
3 the girls on the neck.

04:00

4 A. You know, just make -- they'd scream and holler and, "Are
5 you going to quit? Are you going to quit?" "Yeah, yeah,
6 yeah."

7 Q. And you bit the girls on the ear.

8 A. I didn't bite them. I just, you know, like I was going
9 to.

04:00

10 Q. Okay. When you were doing this, you were alone with them.

11 A. The house was -- my boy was there. Haylon was there.
12 Ashlynn was probably there and other kids.

13 Q. Okay.

14 A. I wasn't alone with them.

04:00

15 Q. Let me ask it this way --

16 A. That was at Thanksgiving.

17 Q. Mr. Spotted Bear, there were times where you were alone
18 with Nxxxx.

19 A. No.

04:00

20 Q. You've never been alone with Nxxxx your entire life.

21 A. When I took her home.

22 Q. Okay. So when you took her home. Were there any other
23 times where you've been alone with Nxxxx, just the two of you
24 in a room?

04:00

25 A. Not that I know of.

1 Q. Okay. And what about Sxxxxxx? Have you ever been alone
2 in a room in a house with Sxxxxxx?

3 A. Nope.

04:01 4 Q. Okay. But you said earlier that you -- I believe I heard
5 you say that you were alone with Mxxxx, but Haylon had come in
6 as well, upstairs during the Thanksgiving time.

7 A. I've never said I was alone with Mxxxx.

8 Q. Okay. Well --

9 A. I said Haylon and Mxxxx was up there.

04:01 10 Q. Okay.

11 A. Haylon won't leave until -- he's the last one to leave.
12 When you're wrestling with him, he stays there until the end.

13 Q. Okay. And, now, you saw the photographs of the girls that
14 we admitted as Government's Exhibit 3? We published --

04:01 15 A. Yes.

16 Q. -- it? Okay. Now, those girls were on your property on a
17 trampoline together, right? That was what was --

18 A. That wasn't my property. That's a -- Corps of Engineers
19 had it then.

04:01 20 Q. But you had said earlier that you guys used the lake
21 that's -- the Corps of Engineers land, they kind of lease it
22 for --

23 A. I said we got a cabin on there where they come, on Corps
24 land. The Corps said we could keep that land there -- or that
04:01 25 cabin, and that, until --

1 Q. And so, sir, you said that you can keep that land, but
2 that's --

3 A. To use it, you know --

4 Q. But that's --

04:02

5 A. -- for our area because that's the only place that we
6 really had to go to the -- they blocked Number 8 off, so that's
7 the only place you could go to the lake, was right down through
8 that road there.

04:02

9 Q. And, Mr. Spotted Bear, that picture depicted all three
10 girls in Twin Buttes, didn't it?

11 A. Yeah, that was taken down there.

12 Q. And that was one of the family gatherings where all three
13 girls were on or near your property.

14 A. The Corps property, yeah, they were down there.

04:02

15 Q. And the Corps property is near your land.

16 A. No.

17 Q. Okay. Well, let's talk about what happened after the
18 girls had disclosed that you had molested them. You called
19 Travis, didn't you?

04:02

20 A. Yeah.

21 Q. Okay. And you called Travis, and you were upset.

22 A. I said, "what's going on?"

23 Q. Well, but I guess question was, you were upset, weren't
24 you?

04:03

25 A. Yeah.

1 Q. And you wanted to know who the other child was who was
2 saying that you molested her.

3 A. Yeah.

4 Q. And you told them that those allegations could send you to
5 prison.

6 A. I said, "What you're saying is slander." I said, "And
7 that could send me to prison, yeah, what you're saying about me
8 doing that to them."

9 Q. And that made Travis upset, didn't it?

10 A. Well, he's always upset.

11 Q. Okay. Well, I guess my question was, at that time was he
12 upset?

13 A. Yeah, he start -- said, "I got nothing to do with it.
14 It's in the Feds' hands now." He said, "I got -- me and
15 Crystal got nothing to do with it."

16 Q. Okay. And then in April of 2016, shortly after Easter,
17 you went to Ivetta Spotted Bear's home to speak about Nxxxx's
18 disclosure of you molesting her, didn't you?

19 A. No, I didn't know she was at -- the girl at the time --
20 when Ivetta quit coming to church, well, I figure, well, maybe
21 it was one of her -- you know, over there, Nxxxx or one of
22 them. So I went over there and knocked on the door, and the
23 door was open. It was, you know, about that far open
24 (indicating). I knocked, and nobody answered, and I hollered,
25 and nobody answered.

1 So I pushed the door in a little bit, and Ivetta was
2 standing there. And I said, "Hey," because she -- first thing
3 she said, "Leave. You got to leave. I'll call the cops." I
4 said, "Well, talk to me." I said -- she said, "I'm going to
5 call the cops." I said, "Well, can't you talk to me?" She
6 said, "I'm going to call the cops," she said, so I just turned
7 around and walked away.

8 Q. Okay. And -- but that wasn't the only time. You've been
9 out to try to speak with Ivetta or Nxxxx before and after that,
10 haven't you?

11 A. I was up there what?

12 Q. You've gone over there to try to talk to Nxxxx on other
13 times, haven't you?

14 A. No.

15 Q. You never have.

16 A. After that?

17 Q. Yes.

18 A. No.

19 Q. Okay. What about --

20 A. She was over there again.

21 Q. What about Sxxxxxx?

22 A. No, I didn't go to Sxxxxxx's either.

23 Q. Okay. Where did you go?

24 A. Was I what?

25 Q. Where did you go? At any point did you try to speak with

1 Sxxxxxx and her family?

2 A. No.

3 Q. Okay. Now, I want to go back to a few more things.

4 You've been in trial the entire time, is that right?

04:05

5 A. Yeah, I was in trial before.

6 Q. Well, no, I meant in -- today you've been in trial, right?

7 You've been able to view --

8 A. Yeah.

9 Q. -- and hear all the other witnesses. That's right?

04:05

10 A. Yeah, I was here.

11 Q. And I want to talk about the first thing that Nxxxxx had

12 stated. She had stated that you licked her vagina, came under

13 the covers, essentially licked her vagina. You're telling me

14 that that didn't happen.

04:05

15 A. That didn't happen.

16 Q. Okay. But Nxxxxx was sleeping in your living room.

17 A. But --

18 Q. Nxxxxx was sleeping in your living room, wasn't she?

19 A. Yeah, she slept there a lot of times.

04:06

20 Q. Okay. And there were times where you would get up in the

21 middle of the night and go and watch Nxxxxx, right?

22 A. Go watch her?

23 Q. Yeah, sitting in a chair and watch her.

24 A. Never did.

04:06

25 Q. Okay. Well, and then when Nxxxxx was nine, you mentioned

1 that you had grabbed her, but you also placed her on top of a
2 tire, didn't you?

3 A. Never did.

4 Q. Okay. You never did. You -- you never pulled down her
5 pants?

6 A. No, I just told -- told you that story a little while ago.

7 Q. I know, and I'm asking the questions about what we're
8 ultimately here to determine.

9 A. No --

10 Q. So I have to ask --

11 A. -- I never did that. I told you the answers.

12 Q. Okay. Well, and when you were driving with Nxxxx between
13 your legs, you touched her vagina with your hand, didn't you?

14 A. No.

15 Q. Okay. And Mxxxx -- you had mentioned Mxxxx was there at
16 your place during ultimately Thanksgiving, and you and Haylon
17 and her were up there. Did you ever sit on a couch next to
18 Mxxxx?

19 A. No.

20 Q. You never sat on a couch next to her.

21 A. Nope.

22 Q. Okay.

23 A. When we wrestled, we was on the floor.

24 Q. Okay. But you --

25 A. They come up there.

1 Q. But at a point you did put your hand on her leg, right?

2 A. I don't know. When you're wrestling, they're all over.

3 You're trying to push them away and get away and --

4 Q. Okay. So there's --

04:07

5 A. And they're jumping on your back and pulling your neck

6 and --

7 Q. But it's possible you touched her on the leg?

8 A. Possibly touched her on the leg.

9 Q. It's possible you might have touched her in the groin

04:07

10 area.

11 A. I never did that.

12 Q. Okay. And, sir, the last few questions I have, when --

13 this entire event has kind of broken your family apart, hasn't

14 it?

04:07

15 A. I suppose, yeah.

16 Q. People have taken sides.

17 A. They're what?

18 Q. People have taken -- your family -- your extended family

19 have taken sides.

04:08

20 A. Yeah.

21 MR. O'KONEK: Okay. That's all the questions I have,

22 Your Honor.

23 THE COURT: Anything else, Mr. Bolinske?

24 MR. BOLINSKE: Nothing else. Thank you.

04:08

25 THE COURT: Pardon?

1 MR. BOLINSKE: Nothing else.

2 THE COURT: All right. Thank you, sir. You may step
3 down.

4 THE WITNESS: You're welcome.

04:08 5 MR. BOLINSKE: I have one last witness.

6 THE COURT: All right.

7 MR. BOLINSKE: Jada Appel.

8 JADA APPEL,

9 having been first duly sworn, was examined and testified as
04:09 10 follows:

11 DIRECT EXAMINATION

12 BY MR. BOLINSKE:

13 Q. Okay. Would you just tell us your name, please?

14 A. My name is Jada Appel.

04:09 15 Q. Maybe you could pull the microphone just a little closer.
16 It looks like -- is that -- okay. Jada Appel?

17 A. Yes.

18 Q. Okay. And how old are you?

19 A. I'm 13.

04:09 20 Q. And do you go to school?

21 A. Yes, I do.

22 Q. Where do you go to school?

23 A. Killdeer, North Dakota.

24 Q. And what grade are you in?

04:10 25 A. I'm in eighth grade.

1 Q. And do you know why you're here today?

2 A. Yes.

3 Q. Do you know Nxxxx?

4 A. Yes, I do.

04:10

5 Q. Do you know Sxxxxxx?

6 A. Yes, I do.

7 Q. And why don't just tell us how you know Nxxxx and Sxxxxxx.

8 A. I know Nxxxx (sic) from school. I went to school with her
9 since pre-K, until fifth grade, I believe.

04:10

10 Q. And that's Nxxxx?

11 A. No, Sxxxxxx.

12 Q. Oh, Sxxxxxx. Okay. So --

13 A. And Nxxxx was a grade younger than me, so I also just knew
14 her too.

04:10

15 Q. So for how many years have you known Sxxxxxx?

16 A. I'm not sure how many years, but I remember just knowing
17 her from pre-K.

18 Q. Pre-K until what grade?

19 A. Fifth grade.

04:10

20 Q. Fifth grade, so maybe five years?

21 A. Yeah.

22 Q. Something like that. And Nxxxx would be about the same
23 amount of years?

24 A. Yeah. She was a grade younger, so --

04:11

25 Q. And did you -- while you were in school with them or

1 around them, did you have -- were you around them at certain
2 times in your life?

3 A. Recess, sometimes Boys and Girls Club.

04:11 4 Q. Okay. And tell us about the Boys and Girls Club. I mean,
5 you know why you're here. Tell us about an event that occurred
6 at Boys and Girls Club if you would?

7 A. We were playing outside.

8 Q. Now, describe "we." I'm sorry.

9 A. Me, Nxxxxx and Sxxxxxx.

04:11 10 Q. Okay.

11 A. We were outside, and it was kind of cold so we were
12 standing by the tallest slide, and Sxxxxxx --

13 Q. Do you know when this was? I'm sorry. I'll keep
14 interrupting, but month or year?

04:11 15 A. Maybe the summer of 2014.

16 Q. Okay. Go ahead.

17 A. We were by the tallest slide, and we were cold, so we were
18 just standing there. And Sxxxxxx tells us that she has to tell
19 us something, and we were like okay, and so -- and I asked
04:12 20 her -- I was like, "Is this the thing you told us at the
21 Minnesota trip?" And she said, "Yeah." And so I was like
22 okay.

23 So she was like -- she was telling the story of when
24 she was with Haylon at Daylon's house -- Daylon Spotted Bear's
04:12 25 house, and his Grandma Diana wanted some -- no. Daylon wanted

04:13

1 something from Lonnie's house, so Haylon and Sxxxxxx walked to
2 Lonnie's house and they went to go grab something. Sxxxxxx
3 went and sat on the couch while Haylon went and got whatever
4 they needed. I don't know what was needed, though. They were
5 -- Sxxxxxx sat on the couch, and Lonnie walked over, sat by her
6 and started just talking to her and then started rubbing her
7 leg and --

8 Q. And this -- this is what Sxxxxxx is telling you, the
9 story.

04:13

10 A. Yes, the story at the park.

11 Q. Okay. Continue.

12 A. He was rubbing her leg and her arm and her chest area.

13 Q. Okay. And did she say anything more?

04:13

14 A. Afterwards she was just like that she felt like -- she
15 felt uncomfortable. And afterwards Haylon had said that he'd
16 got whatever Daylon wanted, so as soon as he said that,
17 supposedly Lonnie stopped whatever he was doing, and Haylon and
18 Sxxxxxx walked back to Daylon's.

04:13

19 Q. And were you with Sxxxxxx on another occasion when she
20 said a different version of this story?

04:14

21 A. Yes, the Minnesota trip, May 2014, for the end of the year
22 school field trip. She had told me, Taylor Morsette, Kaydence
23 Little Owl, Lexi Starr. We were all in a room telling stories,
24 and Kaydence had told a story, and then Sxxxxxx is like, "Okay,
25 I'm going to tell you guys a story," and we're like okay.

04:14

1 So she had told us her and Haylon were at Daylon's,
2 and then Haylon wanted to go get his iPad at Lonnie's house, so
3 then they walked to Lonnie's house to go get the iPad. And
4 Sxxxxxx was looking underneath the cushion, and Haylon was in
5 another room, and Lonnie came over and pushed her and then kind
6 of like sat by her and then started rubbing her leg and
7 touching her in areas she didn't like to be touched.

8 Q. Okay. And was this the same story that she had told
9 before?

04:15

10 A. No. The first time she told the story was in Minnesota.
11 And then the second time she told was at a Boys and Girls Club
12 at the park, but it was different.

13 Q. And was Nxxxx at either of these events?

14 A. At the park at the Boys and Girls Club.

04:15

15 Q. And so Nxxxx then heard this story. Is this the second
16 story Sxxxxxx told or first?

17 A. The first story was the Minnesota trip, where it was just
18 me, Lexi Starr, Taylor Morsette, and Kaydence.

19 Q. Okay. And the second trip then Nxxxx was at?

04:15

20 A. Yes.

21 Q. And that's when Sxxxxxx told a different version of the
22 story you heard earlier?

23 A. Yeah.

24 Q. And --

04:15

25 A. In my mind I was like --

1 Q. Okay.

2 A. -- this is kind of different, but I didn't want to say
3 anything.

4 Q. And did Nxxxx say anything at that time that you remember?

04:16

5 A. She just said that she had always felt uncomfortable
6 around him, but nothing more.

7 Q. Okay. So she didn't say anything against Lonnie other
8 than, well, kind of validated Sxxxxxx's story.

9 A. Yeah, she just said that she felt uncomfortable.

04:16

10 Q. And you've been around Sxxxxxx for, you said, about five
11 years.

12 A. Five, six years, yeah.

13 Q. And can you tell us, do you think Sxxxxxx is a truthful
14 person?

04:16

15 A. Well, there's always drama, and lies would always be made
16 up in school. And we'd always have talks about like different
17 lies and rumors about other girls.

18 Q. And Sxxxxxx would be part of these lies and rumors?

04:16

19 A. Yeah, there'd be like Sxxxxxx and another girl against a
20 whole bunch of other girls.

21 Q. Okay. And so do you think what Sxxxxxx is saying about
22 Lonnie is true?

23 MR. O'KONEK: Objection, calls for speculation.

24 THE COURT: Sustained.

04:16

25 Q. (MR. BOLINSKE CONTINUING) Do you believe Sxxxxxx?

1 MR. O'KONEK: Objection, calls for -- irrelevant.

2 THE COURT: Sustained.

3 Q. (MR. BOLINSKE CONTINUING) Did Nxxxx appear to be telling
4 the truth to you, your observation?

04:17

5 MR. O'KONEK: Objection, calls for speculation.

6 THE COURT: We need to move on to more appropriate
7 questions. I sustained the objection. We can't vouch for
8 credibility of witnesses through any witness, layperson or
9 expert.

04:17

10 Q. (MR. BOLINSKE CONTINUING) You've mentioned this before,
11 but do you think Sxxxxxx is an honest person?

12 A. Not most of the time, no.

13 MR. BOLINSKE: Okay. Thank you. That's all I have.

14 MR. O'KONEK: No questions, Your Honor.

04:17

15 THE COURT: All right. Thank you. You may step
16 down.

17 MR. BOLINSKE: The defense would rest, Your Honor.

18 THE COURT: All right. Mr. O'Konek, do you envision
19 any rebuttal?

04:17

20 MR. O'KONEK: No, Your Honor, no rebuttal from the
21 United States.

22 THE COURT: So the government rests.

23 MR. O'KONEK: Yes, Your Honor.

04:17

24 THE COURT: All right. So, members of the jury,
25 you've heard all the testimony and the evidence that you're

04:18

1 going to hear in this case. We're at that point in time where
2 we're going to recess for the day. I need to visit with the
3 attorneys about the final jury instructions and a verdict form,
4 all of which we'll take care of between now and the end of the
5 workday.

04:18

6 When you -- we'll reconvene until 9 o'clock tomorrow
7 morning, and at 9 o'clock, what's going to happen is that I'll
8 first read to you these final instructions. That will take
9 15 minutes, or so. And then the attorneys will present their
10 closing arguments to you, and then you will begin your
11 deliberations.

04:18

12 Please this evening don't visit with anyone about the
13 case. Don't attempt to do any research on your own about this
14 case or anyone that's testified in this case or any issues that
15 have surfaced throughout the trial here. Have a pleasant
16 evening. We'll see you back at 9 o'clock tomorrow morning.

17 (The jury exits the courtroom.)

04:19

18 THE COURT: We're outside the presence of the jury,
19 back on the record here. I'll address renewal of any Rule 29
20 motions for judgment of acquittal and --

21 MR. BOLINSKE: The same motion.

22 MR. O'KONEK: It would've been the same response,
23 Your Honor.

04:19

24 THE COURT: And for the reasons that I previously
25 enumerated after the government had rested its case, the

04:20

1 Rule 29 motion for judgment of acquittal is denied. There's
2 sufficient evidence from the testimony of the three young
3 ladies alone to sustain a verdict on all four counts, and I
4 enumerated in much more detail in my previous ruling my
5 conclusions for that reasoning. I'll incorporate all of those
6 previously stated reasons into my decision renewing the -- or
7 the denial of the motion at the close of all the evidence.
8 This is a case for a jury to resolve, not a judge, and I will
9 let the jury decide all four counts.

04:20

10 In terms of the final jury instructions, has
11 everybody had a chance to look at those, or do you need some
12 time? We can reconvene and meet tomorrow morning before trial
13 if you need more time. I haven't included anything in the
14 final instructions out of the ordinary. They're all rehashed
15 and a re-summary of the four elements. And all of the other
16 instructions are pattern Eighth Circuit pre-approved
17 instructions that I've used in virtually every criminal case
18 that I've tried over the last 15 years.

04:20

19 MR. O'KONEK: Yes, Your Honor. I have no objection
20 to the instructions.

04:21

21 MR. BOLINSKE: Yeah, they -- they look good to the
22 defense, Your Honor. The only thing is --

23 THE COURT: We'll delete the instruction about the
24 defendant not testifying and renumber all of the other
25 instructions accordingly.

04:21

1 MR. BOLINSKE: Yep, no objection.

2 THE COURT: All right. And as to the verdict form?

3 MR. O'KONEK: No objection.

4 MR. BOLINSKE: It's easy enough, yep.

04:21 5 THE COURT: All right. So no objections --

6 MR. BOLINSKE: No objections.

7 THE COURT: -- or exceptions? Very well.

8 In terms of the closing arguments, I don't put time
9 constraints on lawyers. You've all been around long enough,
04:21 10 tried enough cases, read all the studies. You know how long
11 juries can pay attention to closing arguments, and if you
12 choose to make it long, you always are at risk of putting a
13 jury to sleep, so do whatever you feel that you need to do in
14 closings.

04:21 15 I'll read the instructions to them first, and then
16 you're free to use any of those instructions in your closing
17 arguments. You're free to use the verdict form as you see fit
18 in closing arguments. Any questions about what you can and
19 what you cannot do in closing arguments in front of me?

04:22 20 MR. O'KONEK: No, Your Honor.

21 MR. BOLINSKE: No, Your Honor.

22 THE COURT: All right. Just to get a ballpark gauge
23 of how long each of you think that you will take on your
24 closings, can you give me your best guesstimate?

04:22 25 MR. O'KONEK: About 20 minutes, Your Honor.

1 MR. BOLINSKE: I would think that would be about the
2 same.

3 THE COURT: All right. And in terms of all the
4 exhibits that go back to the jury, I let them take everything.
04:22 5 We usually have an IT specialist set up a laptop computer if
6 they wish to watch DVDs or -- anyone have a problem with that?

7 MR. O'KONEK: No, Your Honor.

8 MR. BOLINSKE: No.

9 THE COURT: Okay. Any other legal issues, motions,
04:22 10 concerns of any sort that either of you have?

11 MR. O'KONEK: No, Your Honor.

12 MR. BOLINSKE: Nothing, Your Honor. Thank you.

13 THE COURT: All right. Then we will stand in recess
14 until 9 o'clock tomorrow morning.

04:23 15 (A recess was taken from 4:23 p.m., Wednesday,
16 September 13, 2017, to 8:56 a.m., Thursday, September 14,
17 2017.)

18 - - - - -

19

20

21

22

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1 (The above-entitled matter came before the Court, The
2 Honorable Daniel L. Hovland, United States District Court
3 Judge, presiding, commencing at 8:56 a.m., Thursday, September
4 14, 2017, in the United States Courthouse, Bismarck, North
5 Dakota. The following proceedings were had and made of record
6 in open court with counsel and the defendant present, but out
7 of the presence of the jury.)

8 - - - - -

08:56

9 THE COURT: We'll open the record in the case of
10 *United States versus Lonnie Spotted Bear*. We're outside the
11 presence of the jury with both counsel and the defendant. Mr.
12 O'Konek.

08:57

13 MR. O'KONEK: Yes, Your Honor. So I apologize. I
14 caught this morning as I was going through everything that we
15 always charge in the conjunctive in the Indictments, and I --

16 THE COURT: Right.

08:57

17 MR. O'KONEK: -- noticed that two of the counts,
18 Counts 3 and 4, had conjunctive versus disjunctive language,
19 the "and" versus the "or." And since the sexual contact
20 language and sexual act languages contain the "or" language, in
21 order to match that up and not confuse the jury, I just
22 requested that it match those definitions with the "or" instead
23 of the "and."

08:57

24 MR. BOLINSKE: I can't disagree with that. No
25 objections.

1 THE COURT: All right. So is this -- is the one that
2 I have here the one with new changes, or --

3 THE CLERK: That's before changes.

4 (A brief discussion was had off the record.)

08:58 5 THE COURT: Those just on Counts 3 and 4?

6 MR. O'KONEK: I believe so, because I think Counts 1
7 and 2 only just have contact between the mouth and the vulva,
8 so it doesn't have an "or" for either -- or an "and" for either
9 of those.

08:58 10 THE COURT: So that we're all on the same page about
11 the changes, when we turn to F-6, Element 1, the fourth line,
12 it's -- the "ands" are going to be deleted and replaced with
13 "ors," there's two "ors," correct?

14 MR. O'KONEK: Yes, Your Honor.

08:58 15 MR. BOLINSKE: Yes.

16 MR. O'KONEK: "Or arouse or gratify," yes, Your
17 Honor.

18 THE COURT: And you agree, Mr. Bolinske?

19 MR. BOLINSKE: Yes, Your Honor.

08:59 20 THE COURT: And then on Count 4, Element 1, the
21 second sentence, it'll read "directly or through the clothing"
22 rather than "and through the clothing," right?

23 MR. O'KONEK: Yes, Your Honor.

08:59 24 THE COURT: And then the fourth line should also be
25 changed where there's an "and" before "aroused or," and also

1 "or" on gratify -- before gratify, right?

2 MR. O'KONEK: That is correct, Your Honor.

3 MR. BOLINSKE: That is correct.

4 THE COURT: Okay. And those are the only changes
08:59 5 that I believe are necessary. Do both of you agree?

6 MR. O'KONEK: Yes, Your Honor.

7 MR. BOLINSKE: Yes, Your Honor.

8 THE COURT: So it's going to take a little time to
9 make the changes and then photocopy 12 copies or 14 or 15
08:59 10 copies. So anything else?

11 MR. O'KONEK: No, Your Honor.

12 MR. BOLINSKE: No, Your Honor.

13 THE COURT: All right. So we'll get those changes
14 made, and as soon as we can get photocopies made for all the
09:00 15 jurors, we'll get everybody in here.

16 MR. O'KONEK: Yes, Your Honor.

17 THE COURT: We're off the record now.

18 (A recess was taken from 9:00 a.m. to 9:19 a.m., the
19 same day.)

09:00 20 (In open court with the defendant, counsel, and the
21 jury present.)

22 THE COURT: Good morning to all of you. Apologize
23 for the delay, but we will go back on the record in this case.
24 All parties, the defendant, the entire jury is present. We've
09:20 25 set on each of your chairs a copy of the Final Instructions.

1 And, again, I'm required to read those to you. You're welcome
2 to follow along if you wish. After I finish reading those
3 instructions, then the attorneys will present their closing
4 arguments to you.

09:21

5 (The Judge reads the Final Instructions in open
6 court, pages 1 through 20.)

7 THE COURT: These last few pages are general
8 instructions that I'll read to you after the closing arguments
9 have been presented to you.

09:32

10 Mr. O'Konek, you may present your closing argument at
11 this time.

09:33

12 MR. O'KONEK: Thank you, Your Honor. May it please
13 the Court, opposing counsel. My job during closing argument is
14 to take the law that Judge Hovland just provided you and
15 explain how the elements of each of these counts relates to the
16 facts, the witness testimony, and the evidence you've heard
17 throughout this trial.

09:33

18 Now, as I stated at the beginning of the trial in
19 opening statement, this is a case about Mr. Spotted Bear
20 isolating three young girls, ages between six and nine -- or,
21 excuse me, four and nine, and after he isolated them, he
22 accosted them roughly in similar fashions. And I ask that you
23 pay attention to the age of the children both now and at the
24 time that this happened, the access that Mr. Spotted Bear had
25 to these children, and the manner in which he accosted them.

09:34

09:34 1 But before I go into any of the elements, there's
2 been a lot of dates, a lot of times that have been thrown
3 around, a lot of names, and that can be confusing at times, so
4 I'd like to present a brief timeline about where we are. And
5 this may be a little hard to read, but we've started roughly in
6 the 2009-2010 period. And if you look at the right-hand side,
7 you see the dates of births of all of these three girls. The
8 charges mirror in most cases the dates of the birth in a
9 one-year period.

09:34 10 And as the Judge instructed you in the Preliminary
11 Instructions, the date is not an element of the offense. "On
12 or about" just means that it's reasonably close to when it
13 happened.

09:34 14 And as you look at what happened, Mr. Spotted Bear
15 first accosts Nxxxx in a living room when she's four or five.
16 The evidence of that is not only Nxxxx's testimony, but the
17 fact that we have the forensic interview. The defendant
18 corroborates that she stays there and sleeps in the living
19 room.

09:35 20 Roughly around that time period or a year later Mr.
21 Spotted Bear accosts Mxxxx. Again, you have the testimony of
22 Mxxxx. You have the forensic interview that she did. And,
23 furthermore, the defendant corroborated that he was with Mxxxx
24 in November, Thanksgiving time period, of 2009, went upstairs
09:35 25 with her and wrestled with her.

1 In 2010 to 2011, Mr. Spotted Bear accosts Sxxxxxx.
2 The evidence you have is Sxxxxxx's testimony, her forensic
3 interview, and corroboration from the defendant, who stated, "I
4 helped her look for her iPad," when in 2009, roughly around
09:35 5 this same time period, her family left her there when she went
6 to Cancun.

7 In 2010 to 2011, Mr. Spotted Bear is accosting Nxxxx
8 roughly when she's five or six by placing her on his lap or
9 between his legs, touching her vagina.

09:36 10 In 2013, Mxxxx discloses this to her mother. She
11 discloses that, when I was seven, the defendant, he touched my
12 -- my vagina over the clothing. And she discloses that well
13 before any of the other girls disclose it. And I ask that you
14 consider, why would Mxxxx tell her family this at that time if
09:36 15 it didn't happen? why would she go through all this to
16 testify, go through a forensic interview if it didn't happen?

17 Because in 2013 to 2014, Mr. Spotted Bear doesn't
18 stop and he accosts Nxxxx, and this is in the workshop. And
19 the evidence you heard from this case is not only her
09:36 20 testimony, but the forensic interview and the corroboration
21 from the defendant. He admits he took her to the workshop. He
22 admits she was working on the tractor. Admits to grabbing her.
23 He admits that she calls her grandfather, and, furthermore,
24 admits that he paid her \$50 after she wanted to leave.

09:37 25 And finishing the timeline, in 2015, in the fall,

09:37 1 Sxxxxxx discloses to Nxxxx when she's 11, "Mr. Spotted Bear
2 molested me." In 2015, Christmas timeframe, early 2016,
3 Sxxxxxx discloses to her family. You heard from Cheyenne. You
4 heard from Travis. She tells them that the defendant licked
5 her vagina.

09:37 6 And in February of 2016, Travis, the mother -- or,
7 excuse me, the father of Sxxxxxx is so distraught, he wants his
8 daughter to get help, but he doesn't want the police to be
9 involved. He just wants help for his daughter. So as you can
10 see from the 960 report in February, he takes his daughter to
11 counseling, says her great uncle has molested her, and that's
12 how this whole thing gets started.

09:38 13 After that happens in February in 2016, in March
14 of 2016, both Nxxxx and Sxxxxxx give forensic interviews where
15 they describe in detail how the defendant molested them. And
16 then go back to January of 2017, Mxxxx does the same thing,
17 describes in detail how the defendant molested her. And then
18 coming to today, yesterday and the day before, these three
19 girls got on -- they come into this courtroom with all of these
20 people. They testify on that witness stand, and they
21 ultimately tell you in detail how Mr. Spotted Bear molested
22 them.

09:38 23 And as we look through the counts, I ask that you pay
24 attention to the timeline because it's important. This isn't
25 an isolated incident. This isn't something that happened one

09:39

1 time. These girls had disclosed early. They disclosed, and
2 sometimes people didn't believe them. In Mxxxx's case, people
3 might not have believed they could get help. They might have
4 believed their daughter, but didn't think law enforcement could
5 do anything. In Sxxxxxx's case, her father just wants her to
6 get help.

09:39

7 And Nxxxx's case, as you heard from the defendant,
8 she's the one that was there all the time with him. She's the
9 one that has the most trouble on the stand. She's the one that
10 is going through a lot when all of this is going on. And I ask
11 that you consider that because as we go through the counts, we
12 have to look at not just the elements, but what is the evidence
13 that corroborates the elements? And I'd like to take a minute
14 to go through each of the different counts.

09:39

15 In Count 1, aggravated sexual abuse of a child -- for
16 all of these counts as we go through it, two of the elements
17 have already been proved through the stipulation. That's the
18 Indian country nature and the Indian status. That's been
19 stipulated to. I won't go into that any further.

09:39

20 In terms of Count 1, though, that the defendant
21 engaged in a sexual contact, contact between the mouth and
22 vulva, vulva being the external genitalia of a female,
23 otherwise known as the vagina, the evidence that you got is
24 that the defendant licked Sxxxxxx's vagina, that he did it
25 because she was looking for an iPad.

09:40

09:40

1 And how does he do it? He knows that she's six. He
2 knows her family is away. He isolates her by having her go
3 from Uncle Daylon's house to his house, pushes her down, pulls
4 down her pants, and licks her vagina. And how do we know that
5 she's under the age of 12? well, she said she's six years old
6 on the stand. She could have been five or six, and you heard
7 the forensic interview.

09:40

8 And there was a lot of talk in the opening statement
9 that there wasn't corroboration, and I want to go through that
10 now, so let's start with Number 1. First, Mr. Spotted Bear, he
11 admits that Sxxxxxx spent time with her cousin on or near his
12 property. Mr. Spotted Bear, when he testified -- or, excuse
13 me. Mr. Spotted Bear asked Travis and Crystal for Sxxxxxx to
14 come out and play. You have that from Travis, from Crystal.
15 They testified to that.

09:41

09:41

16 Point 3, Mr. Spotted Bear admitted to spending time
17 alone with Sxxxxxx. He said that on the stand. Travis and
18 Crystal stated that they left Sxxxxxx with Mr. Spotted Bear
19 when they went to Cancun in 2009. Mr. Spotted Bear, when he
20 was on the stand, confirmed that Sxxxxxx was in Twin Buttes
21 when Travis and Crystal went to Cancun. Mr. Spotted Bear
22 confirmed in detail that he helped Sxxxxxx find her iPad.

09:41

23 The defense made a big deal about this iPad, when it
24 was bought, but the defendant testified and said, "Oh, yeah, I
25 remember helping her find that iPad." why would he remember

1 that specific detail? What was so important that he remembers
2 something that happened eight years ago, nine years ago?

09:42 3 You've also heard from Travis and Crystal. They've
4 noticed changes in Sxxxxxx's demeanor. You heard from Travis
5 and Crystal that Sxxxxxx is a truthful person. Sxxxxxx
6 previously told Cheyenne. She broke down and cried and told
7 her that Mr. Spotted Bear had licked her vagina. And then,
8 finally, she tells a forensic interviewer. She decides she's
9 going to tell them again. She's going to go through this whole
10 process, keep talking with people about what happened.

09:42 11 why -- what reason does Sxxxxxx have to lie about
12 this? What reason does she have to lie by talking to Nxxxx
13 about what happened, talking to Cheyenne, her sister; her
14 parents, a forensic interview? And then to get in this
15 courtroom and take that witness stand and say what happened as
16 a kid in front of all of these adults, what reason would she
17 have to lie?

09:42 18 So I ask that when you look at corroboration,
19 remember those ten points, because these instances, they
20 happened in private. They happened when no one is around to
21 watch. The United States was open at the beginning. There's
22 no eyewitnesses. There's no injuries. There's no DNA
23 evidence, and that's because of the nature of the crime.

09:43 24 You heard that from Christal Halseth. She told you
25 about how these instances happen and the effects on children.

1 And I ask that you look not just at the child's testimony, but
2 the effects that have happened to them, who they've told
3 before, how they've reacted. It's important.

09:43 4 what also is important is we go to Count 2. We look
5 at Nxxxx Hxxxxxx Exxxx, and this is the count that involves Mr.
6 Spotted Bear licking her vagina. The first element is that he
7 engaged in a sexual act, contact between the mouth and the
8 vulva, again, outer organs of the female genitalia, also known
9 as the vagina.

09:43 10 She got on the stand and stated that the defendant --
11 she's sleeping in her grandfather's or Mr. Spotted Bear's home
12 in Twin Buttes on a mattress. He -- she's in the living room.
13 Her grandfather is in a different room. Haylon, her cousin, is
14 in a different room, and all of a sudden she wakes up to the
09:44 15 defendant under the covers, pulling down her pants, licking her
16 vagina. She says she was four. In the interview she says
17 five, but she's roughly four or five, so she's under the age of
18 12.

09:44 19 And what's important is there's corroboration for all
20 of that as well. First, Mr. Spotted Bear admits that Nxxxx
21 spent time with her cousin on or near his property. He said
22 that yesterday. You heard from Ivetta that Mr. Spotted Bear
23 often would ask for Nxxxx to come over and play with Haylon,
24 much like he did with Sxxxxxx. Mr. Spotted Bear testified
09:44 25 yesterday that Nxxxx stayed over at his house all the time.

1 She was there the most. And when she was there alone, without
2 Ivetta, she would sleep in the living room on a mattress. It
3 corroborates what Nxxxx -- what has happened to Nxxxx.

09:45 4 Most importantly, on the next count, which we'll get
5 to in just a second, Mr. Spotted Bear admits to taking Nxxxx to
6 his workshop, grabbing her on the arm. He says she tries to
7 call using a phone. He says she's got an app on her phone and
8 that he (sic) pushes it.

09:45 9 Prior to that the defense made a big deal about phone
10 records. The defendant on the stand admitted that that call
11 had been made by her and the exact way Nxxxx said it happened.
12 And it might have sounded weird that she asked for \$50, but the
13 defendant said, "I gave her \$50." And the way it sounded like
14 it happened was Nxxxx was trying to leave. He grabbed her
09:45 15 hand, pulled her away, something bad happened, and he gave her
16 \$50.

09:45 17 And that's an incident where, as you heard from
18 Nxxxx, he has her on a tire, tries pulling her down on the
19 pants. Why is the defendant remembering this incident, all of
09:45 20 those details from something that would have happened four or
21 five years ago if nothing major happened? Why would somebody
22 remember all of those details for something that was just a
23 regular day? Just like with Sxxxxxx, why would he remember
24 about the iPad? Why is he remembering this regarding the
09:46 25 workshop? It's because he tried -- as he pulled down her

1 pants, he attempted to touch her genitalia. That's what she
2 was afraid of because he had done it before.

3 And what's also important as we go through this, as
4 you can see in some of the other points, is that Ivetta
09:46 5 remembers Mr. Spotted Bear asking him (sic) to work at the
6 workshop, and the defendant specifically stated, "Yes, I came
7 over. I asked for her to work, and she did."

8 Ivetta has noted changes in Nxxxx's demeanor. Ivetta
9 testified that Nxxxx is a truthful person. Ivetta remembers
09:46 10 that Nxxxx, when she was five or six, stated that Mr. Spotted
11 Bear had sat her on his lap or between her (sic) legs and let
12 her drive while he was in a truck. Mr. Spotted Bear confirmed
13 that he did that. And, again, Nxxxx previously told a forensic
14 interviewer that Mr. Spotted Bear molested her.

09:47 15 why would Nxxxx get on the stand, testify in front of
16 all these strangers, go to a forensic interview before that?
17 when all this came out, it came out and she had to talk about
18 it. You heard from Ivetta. The moment that it comes up, she
19 asks, "Did this happen?" Nxxxx can't even look at her. She
09:47 20 looks away and just starts crying.

21 And as we look at Count 3, we've already gone through
22 some of them, but the first element is -- it's an attempt.
23 It's a different type of a charge. It shows that the defendant
24 had to take a substantial step to engage in a sexual act. In
09:47 25 this case the sexual act was to touch the genitalia. And when

1 you hear not over the clothing, it means he would have
2 attempted to go -- touch skin to skin.

3 And at that point what is the evidence to show?
4 well, the evidence is the defendant's own corroboration. That
09:48 5 is important. Although the defendant denied that he went any
6 further, he got exactly to where Nxxxx said it happened except
7 for that part where he did it. He admitted everything except
8 the part where he said he did it. why are their details so in
9 sync if nothing happened?

10 And why that's important is the substantial step in
11 that case is he pulled down her pants. She had to hold up her
12 underwear. And as we know, after that happened, she calls her
13 grandfather by pushing a button on her app, and then he gives
14 her \$50. That's not in dispute.

15 And at that time she said she was nine. She was
09:48 16 under the age of 12. And everybody remembers that she was nine
17 at that time. Mr. Spotted Bear remembered that. Ivetta
18 remembers that.

19 And, finally, Count 4, that's involving Mxxxx
09:49 20 Sxxxxxxxxx. The first thing we asked is whether she wanted to
21 be here. She didn't. She didn't want to testify. She didn't
22 want to be involved in this case. And you heard from Meranda,
23 this was hard on her family.

24 And Mxxxx was the first person to disclose. Her
09:49 25 family had to deal with the fact that Mxxxx says, "My

1 grandfather touched me on top of the clothing on my genitalia."
2 And how did that come out? It came out through a talk that
3 Meranda, her mother, had. Don't touch people in certain parts
4 of your body, and then she breaks down crying and says, "Mr.
09:49 5 Spotted Bear did this to me." Why would she say that at that
6 time?

7 And then she doesn't go over there again. The family
8 doesn't want her to. And what's important about that is at
9 that time she says she's seven, and that detail that was
09:49 10 presented about when this happened is confirmed by almost all
11 of the parties.

12 Specifically, in terms of corroboration, again, Mr.
13 Spotted Bear admits that he -- that Mxxxx spent time with her
14 cousin, Haylon, near -- on or near his property. Brad
09:50 15 Sanderson, Mxxxx's father, said he went on a hunting trip and
16 left Mxxxx with Mr. Spotted Bear. Mr. Spotted Bear admitted,
17 yes, Mxxxx visited him during Thanksgiving when she was seven
18 years old. He went on further and said, "Yes, Brad went
19 hunting. He left Mxxxx with us."

09:50 20 Fifth, he admitted that he wrestles with Mxxxx and
21 going upstairs with Mxxxx. And that's important because what
22 does Mxxxx say happens? She says she's with Haylon, they're
23 playing downstairs, they're wrestling. Then they all go
24 upstairs, and Mr. Spotted Bear tells Haylon to go downstairs.
09:50 25 They sit on the couch. He puts his hand on top of her

1 genitalia, on top of her basketball shorts, and tries to go
2 underneath, and she stops.

3 Again, everything is in step. Every person who's
4 testified is in agreement to the details, including the
09:51 5 defendant. And he admits to all of the corroborating
6 information except for the point -- he doesn't say, "I molested
7 Mxxxx." But, again, why would he remember that detail for
8 something that happened eight, nine years ago?

9 He seems to have pretty good memory about everything
09:51 10 that these girls are saying except for the part where they
11 molested -- where he molested them. That's corroboration. And
12 although the defendant denied it, the very fact that he
13 remembers all of that shows it must have been an important
14 event for him to have that kind of a memory in each of these
09:51 15 different cases.

16 And, finally, as we go through some of these
17 corroboration items, Mxxxx's -- when she was nine or ten, she
18 discloses to her parents, and her initial disclosure is three
19 years before these other girls. The defense is trying to argue
09:52 20 that there was some sort of collusion. Why would this get
21 reported, the family say I don't want anything done? It
22 negates that.

23 And ultimately Mxxxx told a forensic interview almost
24 verbatim what she told you on the stand, and she was shook up.
09:52 25 She was crying. She didn't want to testify. She didn't want

1 to be brought into this because it's ripping their family
2 apart. And ultimately you heard from Meranda that Mxxxx is a
3 truthful person.

09:52 4 And what was most important from Mr. Spotted Bear's
5 testimony is that he admits to biting the girls on the necks
6 and ears when he wrestles with them. Now, that was a piece of
7 information that came out on direct examination, I believe.
8 And why is that important? I mean, is that normal behavior,
9 five to seven -- or five- to nine-year-old girls?

09:52 10 In all of these cases, at least especially in
11 Mxxxx's, they're talking about potentially wrestling and things
12 like that. What is going on is that the defendant has taken
13 these girls, who are young, he's isolating them. He's getting
14 them comfortable, and he takes it to a step that they don't
09:53 15 understand, whether he's licking their vaginas, whether he's
16 pulling down their pants and trying to touch their vaginas, or
17 he's isolating them when their father goes on a hunting trip
18 and puts his hand -- kind of testing the waters. And it just
19 so happens that Mxxxx was the only one that didn't have to go
09:53 20 back there. She told her family, and that's important.

21 And we talked a little bit about the propensity
22 evidence. That's what you heard with the instruction about, if
23 you -- all of you agree, a lower standard of proof, then you
24 can potentially apply the incident involving the driving on the
09:53 25 lap. Now, that has been corroborated by almost all of the

09:54 1 parties. No one is disagreeing that the defendant put Nxxxx in
2 between his legs when he drove. Ivetta heard Nxxxx talk about
3 it and thought that's weird. Nxxxx is saying, "He touched me."
4 Again, the defendant corroborates a lot of it up and to the
5 point where he says, "I touched her."

09:54 6 And in terms of intimidation, if you look at F-14, I
7 believe it is, which is your instruction about influencing
8 witnesses, you can use that to determine consciousness of
9 guilt. You heard what the defendant did. As soon as he finds
10 out, he goes and he calls -- he calls Travis, the father of
11 Sxxxxxx. He's angry with him. He's trying to intimidate him.
12 You heard from Travis. He's an intimidating type of guy. And
13 he doesn't deny the allegations. He just simply says, "I want
14 to know who this other girl is."

09:54 15 And then guess what ends up happening. He goes over
16 to his sister's house. And he doesn't just go over. That
17 might be reasonable, going over, wanting to have a talk. He
18 attempts to break into the property. He even admitted it, "I
19 went through the doggy door, opened the door." That's not
09:54 20 rational behavior. And you heard from Ivetta that he looked
21 suicidal. You can look at it and determine all of that to
22 determine whether or not that's consciousness of guilt.

09:55 23 And you heard expert testimony in the form of
24 Christal Halseth from the Northern Plains Child Advocacy
25 Center, somebody who's interviewed thousands of children,

1 gotten training on forensic interviews on child sexual abuse,
2 about the behaviors that child sexual abuse -- what victims of
3 child sexual abuse will display in terms of behaviors.

09:55 4 And she told you -- I ask that you remember this --
5 that it's common for children not to disclose sexual abuse
6 right away, but to delay because they're scared, because they
7 don't understand what happened. They don't want the person to
8 get in trouble. You heard from Nxxxx. She loves her grandpa.
9 She still loves him. She doesn't want the bad thing to happen,
09:55 10 essentially. She didn't want it to happen, but she doesn't
11 know how to process it at that time.

12 You also heard from Christal, children aren't
13 supposed to talk about family business to strangers. They're
14 not supposed to talk about sexual activity. Sexual activity
09:56 15 almost always occurs in private. Kids don't understand sex.
16 why would they talk -- want to talk about it with strangers?

17 She testified that it's common for children to be
18 accosted by a close relative or people that children trust.
19 Yes, strangers can molest children, but it's common -- it's not
09:56 20 always strangers because somebody that they trust can isolate
21 them, knows their ages, knows what they like. That's what
22 happened in this case.

23 She said it's common for children to have changes in
24 their behavior after the abuse. You've heard from Sxxxxxx's,
09:56 25 Nxxxx's guardians of the changes. That's corroboration.

09:57 1 You heard that it's common for children not to
2 disclose everything at once. Everybody has different people
3 that they talk to. You talk to your co-workers different than
4 you talk to your significant others. You talk to them
5 different than you do your friends. You go to work and
6 somebody -- you're having a bad day, and someone says, "How are
7 you doing?" You're probably going to say, "Fine," just kind of
8 how you do it.

09:57 9 when you get home, you might talk to your spouse and
10 say, "I can't believe this day I've had." But we talk to
11 different people differently, and kids especially. They'll
12 talk to their friends differently. They'll talk to the adults
13 differently.

09:57 14 But what's most important is that forensic interview.
15 That's when the child is most comfortable. That's when that
16 child is getting asked neutral questions, trying to avoid
17 subjectivity. They're trying to figure out what happened.
18 Those girls at that time did not know what questions would be
19 answered -- or asked, I should say. You heard that from
09:57 20 Christal. They didn't know. They just knew they were supposed
21 to talk to somebody. These girls didn't know that this was
22 going to be going to trial, and they certainly didn't want to
23 have to testify. You could see it in their eyes.

09:57 24 And you heard that it's common for there to be
25 inconsistencies in children when they repeat the incident, and

1 that a lot of times is the person to whom they're talking to.
2 And it's common for children to have potentially a flat affect
3 when they testify, to be not emotional because they've had to
4 talk about it so much, because people react to trauma
09:58 5 differently. And this incident, from the time that they gave
6 their forensic interview to trial, 16, 17 months.

7 And what I want to leave you with, Government's
8 Exhibit 3. Now, I know you've seen this photo, and I'm not
9 putting it up there to say look how vulnerable these children
09:58 10 are. That's not the purpose. The purpose is to show that
11 these three children were together around six years old, all of
12 them, on Mr. Spotted Bear's property. He was a big part of
13 their life. He isolated them. When he isolated them, he took
14 advantage of them by either licking their vaginas, pulling down
09:59 15 their pants to try to touch their vaginas, putting their (sic)
16 hands on their vaginas. And he admits he even bites their
17 necks and ears.

18 But these are the three girls, and that's how they
19 looked at the time. That's important because the people you
09:59 20 heard from were not those girls at the time. They were the
21 people that had to figure out what was happening to them. And
22 a six-year-old, as you heard, may not understand that.

23 And I ask, what are motivations to lie? There's been
24 a lot of talk that there's just allegations. These aren't
09:59 25 allegations. The girls told you what happened to them, and why

1 would they lie? why would they go through this whole process?
2 what do they have to gain? what is there to gain? Is it so
3 that they can relive the moment over and over again? Is it so
4 that they can be ostracized, so their family can split apart?
09:59 5 There is nothing for these children to gain to go through this
6 whole process.

7 There is no reasonable doubt in this case. There is
8 none, because as the Judge instructed you, proof beyond a
9 reasonable doubt is proof that leaves you firmly convinced of
10:00 10 the defendant's guilt. Proof beyond a reasonable doubt does
11 not mean proof beyond all doubt.

12 And as you look at this, just to recap, each of the
13 girls got in here and testified about what exactly had
14 happened, and the defense has tried to discount that and almost
10:00 15 seem to think that doesn't matter. But three children, 13 and
16 younger, got on that stand and said, "Mr. Spotted Bear molested
17 me." They had -- before that they gave a forensic interview
18 that was corroborated, very, very similar to what they said on
19 the stand.

10:00 20 And they've talked to other people about it as well.
21 You've heard from their family members that Mr. Spotted Bear
22 had access to them, whether they were left alone in his
23 custody, whether they were playing with Haylon, and also from
24 Mr. Spotted Bear with his incredible memory of what otherwise
10:00 25 would be mundane details from seven to nine years ago about

1 everything that happened that these girls told you except for
2 the fact that he says he didn't molest them.

3 Use your common sense in the ways of the world.
4 You're allowed to do that. You are the only judge of the
10:01 5 credibility in this case. That is your sole province, not for
6 me to judge, not for any other witness to judge a witness's
7 credibility. That is your consideration. I ask that you judge
8 Mr. Spotted Bear's credibility, to those three girls, those
9 three interviews, all of the family members that testified
10:01 10 about the changes and the access that Mr. Spotted Bear had.

11 Because if you look at all that, these aren't just
12 three girls saying it happened and the defendant saying it
13 didn't happen. This is the defendant isolating and taking
14 advantage of three young girls who at the time had no idea what
10:01 15 was happening to them. Thank you.

16 THE COURT: Mr. Bolinske.

17 MR. BOLINSKE: Your Honor, counsel, members of the
18 jury. In the beginning of this case I got up here and told you
19 that Lonnie Spotted Bear was not guilty. I told you that he
10:02 20 would get up on the witness stand, look you in the eye and tell
21 you that he didn't do these terrible things that he was accused
22 of. He got up there, sincerely, truthfully looked everyone in
23 the eye and said that he did not commit these acts.

24 Then he was cross-examined or questioned by the U.S.
10:03 25 Attorney, a professional questioner. It's your job to

1 determine whether he was scathed, whether there were any
2 breaking moments, whether anything amazing was revealed,
3 whether any -- you know, his credibility, how he looked when he
4 was testifying. I submit to you that he didn't break.

10:03

5 He talked about wrestling with kids. He talked
6 about, you know, doing things on the neck, things like that.
7 The inferences that you can infer from those things can be very
8 innocent on one side and very sinister on the other side.
9 They're open to interpretation, and that's where you come in to
10 determine the credibility.

10:03

11 I also told you in my opening statement that this
12 case -- the government's case was conclusion-driven with all
13 kinds of inconsistent statements and that the investigation
14 wasn't much of an investigation as names of potential witnesses
15 -- very important witnesses were included in their own
16 investigation and not pursued or explored.

10:03

17 Then fast-forward a couple of days, what happened?
18 The forensic interview -- I believe it was Nxxxx -- is shown,
19 and there's a part edited out. Which part was edited out? It
20 was the section about a conversation between Sxxxxxx and Nxxxx
21 and a Jada Appel where they -- where Sxxxxxx at miscellaneous
22 times gave different versions of this story. I then had to
23 play the minute-and-a-half of that video that was left out that
24 related directly to this conversation between Sxxxxxx and Nxxxx
25 that I discussed in my opening statement that involved Jada

10:04

10:04

1 Appel.

2 Expanding upon that, the main investigator, the lead
3 investigator, Mr. Bennett over here, I've got nothing against
4 Mr. Bennett, but he did not testify. Then there was the other
10:05 5 FBI investigator, Paula Bosch. She did -- he testified. He
6 didn't testify for the government. I had to call him and
7 question him. Paula Bosch didn't come in and testify. There
8 was mention of her. They didn't come in and explain away the
9 holes in the gaps in this investigation. The main person, the
10:05 10 main investigator, Mr. Bennett, built this case, was not called
11 as a government witness. I called him as our witness.

12 I didn't mean to be rude. I didn't mean to be
13 disrespectful. I -- that's -- I hope I didn't come off that
14 way, but one of the most telling exchanges in that conversation
10:05 15 or questioning that I had of him was that, you know,
16 "Mr. Bennett, if you were personally accused of something this
17 bad, would you want the credibility of the accuser explored?"
18 To that question he answered, "Yes."

19 Then I said, "well, did you explore the credibility
10:06 20 of these accusers?" No. Did he have this information about
21 Jada Appel? Yes. And so I think we can expect that of
22 investigations and investigators in circumstances like this
23 where the stakes are so high and the importance level is so
24 high, and the Judge talked about that in the jury instructions,
10:06 25 life's most important decisions.

1 This case ultimately begins with Sxxxxxx. Her
2 version of events, her story, that Lonnie knocked her down
3 looking for Haylon's iPad and -- excuse me if I don't -- and
4 licked her crotch. And she says that she kicked him, hit him,
5 scratched him. And after all of this, one would have expected
6 corroborating evidence of people that were around that would
7 have seen black-and-blue marks, scratches, things like that
8 that could have corroborated this.

9 There was stuff put up on the board about
10 corroborating evidence. I submit to you that corroborating
11 evidence was normal life evidence that, you know, kids were at
12 his house, that they may have gone upstairs at one point, they
13 may have gone downstairs, in a shop. All of these things were,
14 I submit to you, just normal life corroboration. They weren't
15 real solid evidence corroboration.

16 And then Sommer Cummings testified and came in, and
17 there was a lot of talk about this Haylon's iPad, the forensic
18 interview, and a lot of the testimony was looking for Haylon's
19 iPad. Mr. Spotted Bear, I think, cleared that up. There was
20 some sort of a tablet, or something, but Haylon's iPad that
21 they were -- allegedly were looking for that they stuck firm to
22 was not even purchased until after the dates in this case. The
23 dates for the allegations for Sxxxxxx were August, I believe,
24 23rd of 2010, to August 23rd, 2011. The iPad arrived --
25 there's a receipt in evidence -- in early 2012. It was

1 ordered, I believe, December 31, 2011, after this.

2 Then there's Jada Appel, who testified, who they had
3 access to. Didn't interview. Didn't talk to. Didn't do
4 anything. She -- she got up here. She's not connected to this
10:08 5 case. She's not a family member. She's an independent person.
6 She's got no agenda. She's at the Boys and Girls Club, and
7 Sxxxxxx says, "I've got a story to tell." The story is that
8 Lonnie had done something to her, that he had, you know,
9 touched her or something like that, never anything -- excuse
10:08 10 me. It didn't include licking a crotch. I don't want to talk
11 like that, but I have to say that. The story didn't include
12 that.

13 Then at another Boys and Girls Club event, I think it
14 was, the story changed. There were different details,
10:09 15 different things. Still didn't include anything about licking
16 a crotch. At one of those events Nxxxxx was there. Nxxxxx
17 didn't say anything. She did say -- she testified Nxxxxx felt
18 uncomfortable around Lonnie, but didn't say anything, no
19 details, no corroboration of what they testified to or what
10:09 20 they claim happened.

21 Then I think it was Cheyenne who testified that in
22 Cancun, Sxxxxxx had gone to someone named Cole and said that
23 something had happened to her. Well, that's the first I'd
24 heard of that. There was no Cole here that testified. I
10:09 25 didn't see any Cole, and there -- I don't know what that was

1 about, and that wasn't apparently explored or true or one of
2 the things. That's for you to determine, the credibility and
3 if all these pieces fit together.

4 Then we've got Nxxxx's claims of sleeping in the
5 living room out in the open of Lonnie's house and Lonnie coming
6 in and, out in the open -- excuse me again -- licking her
7 crotch. How these events occurred and whether they occurred
8 and supporting evidence or lack of supporting evidence, that's
9 for you to determine.

10 Then you've got the stuff about the shop and the
11 phone and calling David Holding Eagle to come pick her up,
12 first on a motorcycle, then in a car. And, again, there's no
13 records of anything. Lonnie does remember something in a shop.
14 Believe me, he's been charged with a bunch of serious crimes
15 here, and he's wracked his brains for a long time trying to
16 figure out what is going on here and what -- what happened. He
17 does remember an incident in his shop. It didn't involve any
18 of the allegations, but maybe she got mad at him for him
19 getting mad at her for not doing the work. I don't know.

20 That's not -- that's just speculation here, but that's a lot of
21 this case, is just speculation.

22 Then after that, to follow that up, either Nxxxx or
23 Ivetta Spotted Bear kept adding to and changing the number of
24 incidents that allegedly occurred and how this occurred.

25 You've got -- I think Mr. Bennett testified about this --

1 Ivetta Spotted Bear calling the FBI. I think it was March 31,
2 2016, and saying, "Oh, yeah, by the way, this happened, you
3 know, eight to ten more times. Nxxxx told me." Then there was
4 no testimony of Nxxxx ever saying this. It wasn't
5 investigated. It wasn't proven. It wasn't anything. Was that
6 Ivetta Spotted Bear? Was that Nxxxx? There were no forensic
7 interviews. There was nothing else explored in relation to
8 that. That doesn't add up.

9 And remember Nxxxx hadn't said any of these things
10 until Sxxxxxx started telling these stories at the Boys and
11 Club events -- Boys and Girls Club events, and that their
12 stories, quote, licking the crotch mirror each other.

13 Then we have Mxxxx's allegations of touching, Lonnie
14 touching her leg, not doing it to -- the forensic interview
15 says that it was an attempt, that he didn't do it. She came in
16 here and testified that he did do it. The forensic interview
17 says she pushed the hand away. I don't know what happened. I
18 wasn't there. Lonnie Spotted Bear testified about wrestling,
19 things like that, people jumping on him. That can happen.

20 That does happen.

21 Then years later, if your mother is talking to you
22 about inappropriate touching or where to touch, I submit to you
23 that things can come to people that just aren't accurate, that
24 just aren't true. But Lonnie Spotted Bear testified he did not
25 intentionally or unintentionally, or anything, touch any of

1 these children or do anything inappropriate. That's for you to
2 determine, the credibility of these witnesses and the
3 credibility of Lonnie Spotted Bear. I don't think he wavered.
4 That's not for me to determine. That's for you to determine.

10:13

5 Then also what is very interesting in this situation
6 with Mxxxx is that Travis, Sxxxxxx's dad, was involved in this.
7 And right in the forensic interview -- again, it was a part
8 that was left out, that was edited out, that I had to bring up
9 on cross-examination with the forensic interviewer, and I have
10 to quote this part, "when asked how it came out now about
11 Mxxxx, she said that her cousin said Lonnie did something to
12 her, so that girl's dad called and said he knew what happened
13 to Mxxxx and asked Mxxxx to help strengthen the case." All
14 these things don't add up. They're all just too odd, and the
15 stakes here are too high.

10:13

10:14

16 Then on Mr. Spotted Bear's behalf we had several
17 witnesses come in. It was just yesterday. I don't need to say
18 everything that they said. We were all here. Talked about
19 Lonnie as a good man, a generous man, a kind man, that they
20 didn't believe any of these things happened, that they've had
21 daughters, they've had kids, they've had them out at Lonnie's
22 place, they've had them at the place where everyone goes for
23 brandings, for Fourth of July, for Labor Day, things of that
24 nature, and that they've never observed anything strange.

10:14

10:14

25 And if they had, they wouldn't have ever had their

1 kids around there because things had happened to them, and they
2 had feelings about things, and they just wouldn't have had kids
3 around Lonnie if they thought anything was untoward or bad.

4 Again, I said in my opening statement that Lonnie
5 Spotted Bear is a generous man. He's a good man. He's a kind
6 man. He's a man with integrity. I think that was shown by
7 everyone. I don't think people even on the other side disputed
8 that.

9 Then we go to the Judge's instructions and the law.
10 That's not the U.S. Attorney. That's not me. That's the law.
11 That's what you, as jurors, have to follow, and that's what we
12 talked about in jury selection, the burden of proof and the --
13 the burden of proof and then reasonable doubt defined.

14 In the opening statement and in jury selection we
15 talked about whose burden it was. It's the government's
16 burden. It's the United States' burden to prove every
17 essential element of the offenses charged and to prove the
18 case, all the charges, all of the elements beyond a reasonable
19 doubt.

20 And the language is in there. It's on page 16 and
21 page 17 of the jury instructions. "If, after carefully and
22 impartially considering all of the evidence, you do not feel
23 convinced that a defendant is guilty of the charge, you must
24 acquit the defendant whether or not he has offered any
25 evidence." There's doubt all over in this case. There's

1 inconsistency all over in this case. There's lack of
2 corroboration, lack of physical evidence, years and years that
3 have gone by, motives, changing stories, credibility issues
4 with one of the witnesses that was the main witness to start
5 all this stuff.

6 And the law is that proof beyond a reasonable doubt,
7 if that's not proven, you must. That's not me. That's not the
8 United States. That's just the law, and that's what was talked
9 about in jury selection. People have been accused of something
10 that they -- that they didn't do, and how did that make you
11 feel?

12 We tried to come in and -- and it's hard to, you
13 know, disprove a negative or disprove something that you can't
14 -- you know, no witnesses to things like that. Mr. Spotted
15 Bear did his best to testify. We brought in character
16 witnesses. We brought in a witness to -- you know, I'm not
17 attacking these girls. That's not my -- I'm sorry if I've
18 offended anyone doing that, but credibility has to be explored.
19 It wasn't explored. It should be, and it has to be when the
20 stakes are this high.

21 Reasonable doubt defined, "A reasonable doubt may
22 arise from careful and impartial consideration of all of the
23 evidence or from a lack of evidence. Proof beyond a reasonable
24 doubt is proof of such convincing character that a reasonable
25 person, after careful consideration, would not hesitate to rely

1 upon and act -- rely upon and act upon that proof in life's
2 most important decisions. Proof beyond a reasonable doubt is
3 proof that leaves you firmly convinced of the defendant's
4 guilt."

10:17 5 All of these factors through cross-examination and
6 through witnesses that we put on create doubt. I submit to you
7 that it's reasonable doubt. The government has to prove the
8 case and all of these charges and the elements beyond a
9 reasonable doubt, beyond if you have a doubt and if it's
10:18 10 reasonable. These doubts are reasonable.

11 After the case started, there were more doubts even
12 created yet. It got more confusing. I don't know the truth.
13 I wasn't there. Is there doubt here? Do we think, well, geez,
14 I don't know. These girls said something happened. Something
10:18 15 might have happened. Gosh, I'm not quite sure. That's an
16 honest feeling. That's not good enough. All of these doubts
17 are reasonable, and they have to prove the case beyond all of
18 these doubts.

19 I'm about done here, and the government is going to
10:18 20 get a chance to come back up here and try to, you know, say
21 what I said wasn't accurate, but Lonnie's life is on the line
22 here. The stakes are so high. The importance level of the
23 decision that all of you make are so high. Please consider all
24 of that. Please follow the duty to uphold the law, and if you
10:19 25 have a doubt and it's reasonable, to stick to your guns and

1 find Mr. Spotted Bear not guilty.

2 I submit to you that I think we've -- you know, we
3 don't have to prove innocence. That's not what this is about.
4 We talked about that in jury selection, and I remember one man
10:19 5 talked about how, you know, he thought we probably had to prove
6 innocence, that we had a burden of proof. We don't. The
7 government has all of the burden of proof.

8 We submitted evidence. Maybe we didn't prove
9 innocence. We don't know what happened. I submit to you his
10:19 10 testimony was credible. We don't have to show that. They've
11 got the burden of proof, and they've got to show it beyond a
12 reasonable doubt.

13 I know I keep repeating myself, but it's just so
14 important here. And that's always my fear, that I've forgotten
10:20 15 something or I've left something out, and it's so hard to let
16 go in these cases because the consequences, the stakes are so
17 high.

18 So please take this case, decide it fairly. Take
19 your time. Think about these things. Try to put the evidence
10:20 20 together and see where it doesn't add up. Think of the
21 situations that involve doubt, the inconsistencies, the
22 credibility issues, the stakes to Mr. Spotted Bear. Thank you
23 so much. I appreciate your time.

24 THE COURT: Mr. O'Konek, do you wish to present any
10:20 25 rebuttal?

1 MR. O'KONEK: Yes, sir. Well, it seems that the
2 defense wants you to forget that there were three children that
3 came in the courtroom, sat in that witness chair, and testified
4 in a room full of strangers, including family members, and they
10:21 5 just must be mistaken, or that this must be some collusion,
6 that all of them got together and, oh, well, they're very
7 consistent, so that must be collusion.

8 But that doesn't account for Mxxxx. Mxxxx reported
9 long before Sxxxxxx, long before Nxxxx. Collusion doesn't make
10:21 10 any sense because you heard from Mxxxx's parents. They didn't
11 want this to go forward anyway, so what's the -- what's the
12 collusion here? What's the reason to lie?

13 There's talk about, he's a kind man, he's a gentle
14 man. They talked about witnesses that they called. Those
10:21 15 witnesses said that they weren't around those children all the
16 time. They weren't there. They don't know what happened.
17 They saw Mr. Spotted Bear with the kids.

18 But what's important is when they were talking with
19 Agent Bennett -- you heard Agent Bennett. He talked about how
10:21 20 he didn't want to go to the school in a small town and just
21 talk about a kid being molested, because word travels fast, and
22 those kids can have a hard time if everybody in their class
23 knows that they've been molested. That could ostracize them.

24 And Jada Appel did come in here. Okay. And so it
10:22 25 might have been a little bit different, but -- so what we

10:22

1 learned from Jada Appel is Sxxxxxx came in, talked to her and
2 said Lonnie touched her inappropriately, touched her body,
3 touched her chest, pushed her down. Okay. So that is what she
4 said. She still said that Lonnie -- or, excuse me, Mr. Spotted
5 Bear had done this.

10:22

6 And I think what's important is they want to gloss
7 over some of these facts, like, oh, what about this iPad, what
8 about this -- all this stuff involving medical records and all
9 this stuff involving everything about corroboration. The
10 defendant corroborated everything. Where's the -- where's the
11 iPhone? He talked about it and said, "Yep, the -- there was an
12 iPad." He talked about for the phone, yep, Nxxxx called on her
13 phone. He's corroborated everything that they're trying to say
14 is reasonable doubt.

10:22

15 He can't say it happened and have it also be
16 reasonable doubt. Those two things cannot make sense together.
17 How can it be that he remembers all of these things and then
18 say, yeah, but where's that corroboration about the phone call?
19 Mr. Spotted Bear remembers Nxxxx making that phone call. He

10:23

20 remembers Sxxxxxx making the -- trying to find the iPad, and he
21 remembers he and Mxxxx wrestling, which if you want to watch
22 the forensic interviews, I ask that you re-watch them. That's
23 very consistent with what those children say. It's very
24 consistent with what they testified about what happened to them
25 on the stand.

10:23

1 And there's -- and there's some sort of insinuation
2 that this was an accident or something along those lines, that
3 it couldn't be. You heard from the kids. They didn't say it
4 was an accident. They said it over and over again. They
5 didn't want this, that this was not something that they
6 enjoyed. This was something scary, something that didn't feel
7 good.

8 And I think what's most important is when the defense
9 was questioning Agent Bennett, they made a big deal about how
10 they called him, they had to call him and asked him, "well, why
11 -- why didn't you interview these people?" And he said, "well,
12 I tried to. I tried to talk to Sommer. She wouldn't let me
13 talk to the kids." And then they were like, ah, that can't be
14 true.

15 And then they called Sommer, and literally the same
16 thing came out. Agent Bennett went and tried to talk to
17 Sommer, the mother of Haylon, who is the person that's been
18 hanging out with all three of these kids when these incidents
19 happened, and they're told they can't speak with Ashlynn. And
20 they're very upset about it because they don't want to be
21 involved. So what is Agent Bennett to do? I mean, they were
22 uncooperative and they were biased.

23 And that's why it's important when you consider all
24 the testimony about all the things that you didn't hear,
25 consider that fact. Consider why those witnesses weren't here

1 is potentially because, as Sommer said, she didn't want to have
2 one of her daughters be forensically interviewed. She didn't
3 want that. She lives on Lonnie's property, dating Lonnie's
4 son. Take that for what it's worth.

10:25

5 when you're talking about credibility, look at Mxxxx.
6 I said it before, but I'll say it again, Mxxxx is the odd man
7 out. If the defense wants to argue some sort of collusion or
8 if they want to talk about all of these different things and
9 these inconsistent statements, what about Mxxxx? What was
10 different about hers? She came in and testified consistent
11 with what was on her forensic interview. She disclosed earlier
12 than the other girls and had absolutely no reason to lie when
13 she doesn't want it to be reported anyways, and that's
14 according to her mom.

10:25

10:25

15 You know, and that's the one where we heard that that
16 happened around Thanksgiving 2009. We have a very firm date
17 there, and Mr. Spotted Bear remembers Thanksgiving 2009. Mxxxx
18 was there. They were wrestling. Bit her on the neck. Went
19 upstairs with her with Haylon. The only thing that's not in
20 agreement on that incident is that Mr. Spotted Bear said,
21 "well, I didn't molest her." But does that make sense? Is
22 that the common sense that you all have?

10:26

10:26

23 Listen to the interviews and listen -- or remember
24 the testimony you heard from Mr. Spotted Bear, because for --
25 they talked about how this was a big moment for the defendant,

1 and it is, but it was also a big moment for these girls.
2 That's something that the defense doesn't want you guys to
3 consider, that this was in some way not a big deal, that this
4 is all some sort of plan or these kids got it wrong or, you
10:26 5 know, the word of a child is not enough, we need more than
6 that. But you heard from Cristal. These things happened in
7 private with close friends, and we were honest -- or close
8 family members, and the United States was honest.

9 Something that happened four, seven years ago, is
10 there going to be evidence out there of injury? No, not now.
11 But what is there going to be? There's going to be the
12 testimony of the children, their willingness to get up and take
13 the stand. There's going to be the corroboration from their
14 guardians, the corroboration from the defendant. And
10:27 15 ultimately we have a case where the defendant and his -- the
16 person that's dating his son denied access to people that could
17 have gotten more information, and that's important too.

18 Because as you look at all of this, reasonable doubt
19 does not mean any doubt. It means a reasonable doubt, and
10:27 20 there's no reasonable doubt where these three kids would have
21 had to go through this with no reason to lie. What reason does
22 an 11-year-old have to say that the person that they love
23 molested them? What possible reason would there be to speak
24 with so many people, give so many interviews, whether it's
10:27 25 speaking with your family, forensic interview, testifying in

1 court, what possible motivation could they have, all three of
2 them? I ask that you consider that because that is not a
3 reasonable doubt. That demonstrates, along with all the other
4 evidence, that Mr. Spotted Bear is guilty. Thank you.

10:28

5 THE COURT: Members of the jury, at this time I'm
6 going to read you the final few pages of the closing
7 instructions, and then you will begin your deliberations.
8 Again, you're welcome to follow along.

10:28

9 (The Judge reads the General Closing Instructions
10 from the Final Instructions in open court, pages 21 through
11 23.)

10:31

12 THE COURT: Members of the jury, I'm now going to
13 release you to begin your deliberations. The clerk will be
14 providing you with all of the exhibits that have been received
15 in evidence here, along with the instructions and a special
16 verdict form.

10:31

17 You are now largely in control of your schedule.
18 I've been dictating when you appear in court and when we take
19 breaks, but now you're in control of that. If you wish to take
20 a break at any time, all that you need to do is tell the deputy
21 marshal or the bailiff that's outside your jury room that
22 you're going to take a break. Let them know approximately how
23 long you're going to break, and that's all that you need to
24 say. The same holds true for lunch breaks. You can take one.
25 You can choose not to take one. You can take as long a break

10:32

1 as you wish.

2 The only restraints that I ever put on juries is that
3 I don't allow juries to deliberate into the evening hours
4 because we've got serious concerns about security issues and
5 having people in this courthouse after the normal working
6 hours. But you need to take as much time as you feel is
7 warranted to deliberate and reach a decision in this case.

8 If you haven't reached a decision at the end of any
9 given workday, then you return the next day at a time that all
10 of you can agree upon to continue with your deliberations. So
11 there are no time constraints on your deliberations other than
12 not allowing you to go into the evening hours on any given day.

13 With that, I'm going to excuse you now to return to
14 the jury room to begin your deliberations. And, again, all the
15 evidence is going to be in your hands within a few minutes.

16 Thank you.

17 (The jury exits the courtroom.)

18 THE COURT: We're outside the presence of the jury.
19 I would just ask that counsel go through the exhibits, make
20 sure that only exhibits that have been received in evidence go
21 back to the jury.

22 As I mentioned before, we have an IT specialist that
23 has probably already set up a laptop computer in the jury room,
24 and if they wish to watch any of the exhibits that are on DVD,
25 they're welcome to do that. If they need help operating any

1 equipment, I just send an IT person in to assist them.

2 Please let Judy know where you can be reached. If
3 there's any questions that the jury presents to me, you'll be
4 first to be notified, and I will solicit your input on how to
5 respond to any such questions. We'll let you know when they
6 break and when they plan on returning throughout the day.

7 Is there anything else that either party feels that
8 we need to take care of?

9 MR. O'KONEK: No, Your Honor.

10 MR. BOLINSKE: No, Your Honor.

11 THE COURT: I want to thank both parties,
12 particularly both attorneys for the manner in which you've
13 conducted yourself and the professionalism that you've shown to
14 one another. I appreciate the presentations made by both
15 parties, and we'll leave this case in the hands of the jury.
16 We'll stand in recess while the jury deliberates.

17 (A recess was taken from 10:35 a.m. to 11:58 a.m.,
18 the same day.)

19 (In open court with the defendant, counsel, and the
20 jury present.)

21 THE COURT: We are back on the record. All parties
22 are present, along with the defendant and the entire jury
23 panel. It's my understanding the jury has reached a verdict.
24 Who has been selected as the foreperson?

25 THE FOREPERSON: I have, Your Honor.

1 THE COURT: Has the jury reached a unanimous
2 decision?

3 THE FOREPERSON: We have.

4 THE COURT: Then I'll have you deliver the envelope
5 to my clerk, and we'll have it opened here shortly.

6 (The verdict is delivered to the Court.)

7 THE COURT: At this time I would ask that the clerk
8 please read the verdict form.

9 THE CLERK: The jury will please listen to the
10 verdict as it is returned and as it shall be recorded. We, the
11 jury, find the defendant, Lonnie Spotted Bear, guilty of the
12 offense of aggravated sexual abuse of a child as set forth in
13 Count 1 of the Indictment.

14 We, the jury, find the defendant, Lonnie Spotted
15 Bear, guilty of the offense of aggravated sexual abuse of a
16 child as set forth in Count 2 of the Indictment.

17 We, the jury, find the defendant, Lonnie Spotted
18 Bear, guilty of the offense of attempted aggravated sexual
19 abuse of a child as set forth in Count 3 of the Indictment.

20 We, the jury, find the defendant, Lonnie Spotted
21 Bear, guilty of the offense of abusive sexual contact of a
22 child as set forth in Count 4 of the Indictment. Dated this
23 14th day of September, 2017, and signed by the foreperson. So
24 say you all, members of the jury?

25 THE COURT: Does either party request that the jury

1 be polled?

2 MR. O'KONEK: No, Your Honor.

3 MR. BOLINSKE: I would, Your Honor.

4 THE COURT: Very well.

12:03

5 THE CLERK: Mr. Nichols, is that your verdict as
6 read?

7 MR. NICHOLS: Yes, it is.

8 THE CLERK: Ms. Brucker, is that your verdict as
9 read?

12:03

10 MS. BRUCKER: Yes, it is.

11 THE CLERK: Mr. Stahl, is that your verdict as read?

12 MR. STAHL: Yes, it is.

13 THE CLERK: Ms. Blinsky, is that your verdict as
14 read?

12:03

15 MS. BLINSKY: Yes.

16 THE CLERK: Mr. Dvorak, is that your verdict as read?

17 MR. DVORAK: Yes.

18 THE CLERK: Ms. Yearsley, is that your verdict as
19 read?

12:03

20 MS. YEARSLEY: Yes.

21 THE CLERK: Ms. Gebhardt, is that your verdict as
22 read?

23 MS. GEBHARDT: Yes.

24 THE CLERK: Mr. Laub, is that your verdict as read?

12:03

25 MR. LAUB: Yes.

1 THE CLERK: Mr. Lill, is that your verdict as read?

2 MR. LILL: Yes.

3 THE CLERK: Mr. Ternes, is that your verdict as read?

4 MR. TERNES: Yes.

12:03

5 THE CLERK: Mr. Friesz, is that your verdict as read?

6 MR. FRIESZ: Yes.

7 THE CLERK: Mr. Schaaf, is that your verdict as read?

8 MR. SCHAAF: Yes.

9 THE COURT: The record should reflect that the

12:04

10 verdict is unanimous. It will be docketed with the federal
11 district court on this date.

12 Members of the jury, on behalf of the federal
13 district court of North Dakota, I want to thank you for your
14 service and for your participation in this case and for your
15 deliberations. These are never easy cases, but your service as
16 jurors is of critical importance to our criminal justice
17 system.

12:04

18 I also want to tell you that I'm going to excuse you
19 from these proceedings, but I want you to hold on for a few
20 moments because I always come back and talk to jurors
21 afterwards and answer any questions that they may have. I'm
22 not going to impose too much of my time on you, but I would ask
23 that you hang tight back in the jury room, and I'll be back in
24 just a few moments. I need to take care of some things with
25 the parties here.

12:04

12:05

1 I also want you to know that all of the instructions
2 that I've been giving you throughout this trial no longer are
3 in effect. With respect to that, you're free to visit with
4 anyone about this case if you choose to do so. If
5 representatives from either of the attorneys' offices contact
6 you to get impressions about the case, you're free to visit
7 with them, just as you're free to visit with friends or family
8 members if you wish, and you're not violating any Court orders
9 if you visit with anyone about this case after a verdict has
10 been received.

11 But you're also free to simply tell people you don't
12 want to visit about the case. You're not obligated to talk to
13 anyone if you choose not to. The decision is yours.

14 But, again, I want to thank you. I'll be back in
15 five minutes or less to visit with you, and I will excuse you
16 now from this courtroom.

17 (The jury exits the courtroom.)

18 THE COURT: What happens now, Mr. Spotted Bear, in
19 federal court after a jury has reached a verdict in a case or
20 after a defendant has pled guilty to anything, before a
21 sentencing hearing is held there's a report prepared by the
22 United States Probation Office called a presentence
23 investigation report. It's a report that's prepared in every
24 case in this country in federal court, and it's primarily used
25 for sentencing purposes.

1 There will be a probation officer that will be
2 getting in touch with Mr. Bolinske shortly. They'll try to set
3 up an interview within a couple of weeks. The interview is not
4 a police interrogation. The sole purpose is just to compile
5 background information about you that will go into this report.

12:07

6 Also included in the report is a history of any prior
7 convictions in your past, if you have any. And there's also a
8 lengthy discussion in the report about the federal sentencing
9 guidelines and how they impact you.

12:07

10 It generally takes a couple of months to put those
11 reports together, but before they're finalized and before
12 they're ever presented to me, both you and your attorney will
13 have an opportunity to review the reports. We want to make
14 sure the reports are accurate, so when it comes into your
15 hands, both you and your attorney, please read it over
16 carefully.

12:07

17 If you notice errors, it's important that you contact
18 the probation officer that wrote the report and make sure they
19 get it corrected. I won't see that report until shortly before
20 the sentencing hearing. There are some mandatory minimums in
21 this case.

12:08

22 And in terms of your status between now and the
23 sentencing hearing -- and we're going to set a sentencing
24 hearing for December 20th, at 2:30. But between now and then I
25 believe that the law is crystal clear in that you are to be

12:08

1 mandated into the -- and held in custody by the U.S. Marshal
2 service until the time of sentencing, unless either party is
3 aware of any exception to that strict provision of the law.

4 MR. O'KONEK: No, Your Honor.

12:08

5 MR. BOLINSKE: I'm not aware of any exceptions, but I
6 would ask the Court to at least consider releasing him. He's
7 been fine released.

12:09

8 THE COURT: Well, I don't disagree with you of that.
9 I'm not aware of any problems that have been created with the
10 United States Probation Office, but the law is crystal clear.
11 It requires immediate remand into custody. There are no
12 exceptions.

12:09

13 I've been confronted with this hundreds of times over
14 the years, and I guess, Mr. Bolinske, I'm going to have to
15 remand Mr. Spotted Bear into custody. If you want to look and
16 research the law and can find any exceptions or exclusions, I'm
17 open to considering those, but I've been at this 15 years, and
18 I haven't been apprised of any exceptions to that mandatory
19 remand provision.

12:09

20 So, Mr. Spotted Bear, the law requires that I remand
21 you into the custody of the U.S. marshals. Do you have any
22 questions, sir?

23 THE DEFENDANT: No.

12:10

24 THE COURT: All right. Anything else, counsel, that
25 we need to take care of before I close these proceedings?

1 MR. O'KONEK: No, Your Honor.

2 MR. BOLINSKE: No.

3 THE COURT: Very well. Then we are adjourned.

4 (Proceedings concluded at 12:10 p.m., the same day.)

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CERTIFICATE OF COURT REPORTER

I, Sandra E. Ehrmantraut, a Certified Realtime Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated: January 22, 2018

/s/ Sandra E. Ehrmantraut
Certified Realtime Reporter